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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
Con Ind	Conservative Independent
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Lab	Labour
Lab Ind	Labour Independent
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Wednesday, 4 March 2015.

3 pm

Prayers—read by the Lord Bishop of Norwich.

Legislative Scrutiny: Digitalisation *Question*

3.06 pm

Asked by Baroness Deech

To ask the Leader of the House what assessment she has made of the impact on the effectiveness of the scrutiny of legislation of the introduction of further digitalisation.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I have not made any formal assessment of the impact of digitalisation on scrutiny, but I welcome initiatives from the House of Lords administration that take advantage of digital developments, and the Government's good law project continues to look to improve the process of scrutiny using new technologies.

Baroness Deech (CB): May I explain for the sake of clarity that by digitalisation I mean the use of computers? Would it not be a great advantage to the House that instead of being presented with amendments on paper that read something like, "delete 'the' and insert 'a'", we saw what they meant by their being placed and tracked in the draft Bill, that Explanatory Notes should be accessible alongside the clauses by clicking through, that each day the successful amendments should be shown incorporated into the draft Bill, that Bills should be in words that we can amend and exchange with each other—I could go on for a long time, but I will not—and that the use of annunciators could be better if they showed the Question being asked rather than just saying, "1st Oral Question"?

Baroness Stowell of Beeston: The noble Baroness is right that we should use new technologies where they are relevant to our work and will help us to do it better. We have made quite a bit of progress during this Parliament. Last night I downloaded the House of Lords app on my iPad, which allows us to look at the relevant papers associated with today's business. On the noble Baroness's specific proposals for tracking changes, I can inform your Lordships that that facility will be available not in quite the detail that she would like but starting down that track from the beginning of the next Parliament.

Baroness Royall of Blaisdon (Lab): My Lords, I certainly welcome the ideas put forward by the noble Baroness, Lady Deech. Does the Leader agree that one of the most important aims for further digitalisation is increasing transparency and engaging those in the wider world with the excellent work of the House of Lords, including scrutiny of course? I certainly commend the recent report by the Arctic Committee and the way in which it is interactive. Does the noble Baroness also

agree that over the course of this Parliament, Twitter has proved a great way of communicating the important job that is done in this House?

Baroness Stowell of Beeston: Yes, I do agree with the noble Baroness. It is important to distinguish between the use of new technology to engage with the public and the use of technology to help us to do our job better; sometimes they serve different purposes. The arrival of the new digital director for Parliament later this month will, I hope, see all these things taken forward with great speed.

Lord Low of Dalston (CB): My Lords, will the Leader of the House make sure, in implementing the changes that she is talking about, that the needs of those who access the information using access technology are not forgotten? I am sure these developments can be very beneficial for people using access technology, but we have to make sure that we do it in the right way, not the wrong way.

Baroness Stowell of Beeston: The noble Lord is right. Not only do we need to make sure that those who use access technology are well served alongside any new technological developments; we also need to make sure that those of us who rely on paper and prefer to do our work in an analogue fashion are able to do so. At the same time, we do not want to be behind innovation, so it is also about bringing people with us.

Lord Campbell-Savours (Lab): If the objective is greater public scrutiny of work in the House of Lords, in particular on legislation, why does the House of Lords not have its own television channel instead of having to share one with the House of Commons? If the public want to watch what happens in this House, they have to wait until one o'clock in the morning. Have we actually assessed what it might cost to provide another channel?

Baroness Stowell of Beeston: As the noble Lord knows, I used to work at the BBC. If he would like, I could give him chapter and verse some other time on the way in which decisions are made on the costing of channels. While we do not have our own dedicated channel, it is important for us all to be aware that people have access to what goes on in this Chamber and in all the other democratic Chambers around the UK via a BBC service called "Democracy Live", as well as what is available through parliamentlive.tv.

Lord Mackenzie of Framwellgate (Non-Affl): My Lords, does the noble Baroness think that perhaps we should be a little more cautious about moving towards a more digital economy before advancing a bit more in the area of cybercrime?

Baroness Stowell of Beeston: The noble Lord is starting to take me off the heart of the Question, which is about the digital means for us to be able to do our jobs here in this House. But he makes an important point.

Lord Naseby (Con): I support the point made by the noble Lord opposite about a separate channel. If you tune in regularly, you will find something of the order of five or six new channels a week on television. Against that background, I cannot see why it is not a priority to find the resources to ensure that there is a proper channel for the revising Chamber that we represent here in the House of Lords.

Baroness Stowell of Beeston: The point I am trying to make is that new technology allows for access to more Chambers than has been possible before. In an analogue world, there was one television channel that could view only one Chamber at one time. Streaming via the internet, all the Chambers operating in the United Kingdom are accessible to everybody simultaneously.

Lord Harris of Haringey (Lab): The noble Baroness the Leader of the House has told us about the importance of the new role of the digital director for Parliament. I appreciate that we are moving slightly off the core subject of the Question, but does she envisage further elements of co-operation between the two Chambers of Parliament, not just in digital areas but in all sorts of areas? What discussions has she had with her opposite numbers in the House of Commons?

Baroness Stowell of Beeston: As for the possibility of greater joint working, the noble Lord may or may not know that one commitment that we have made is for the Clerk of the Parliaments here to explore possibilities with his counterpart in the Commons. Alongside that, if we were to decide to go further down that route, clearly we would need to make sure in due course that we were in a very clear position to negotiate so that this House is never subordinate to the other House.

Lord Tyler (LD): My Lords, is my noble friend aware that one of the suggestions made by the noble Baroness does not require any great technical innovation or, indeed, easy attention to the changes in the computerisation of our activities: placing the Explanatory Notes alongside the appropriate clauses in draft Bills or, indeed, Bills that come before your Lordships' House? I did that with a Bill two years ago with cross-party support and drew it to the attention of some of her noble colleagues, but it does not seem that the Government have caught up.

Baroness Stowell of Beeston: I think I am right in saying that the innovation that will start at the beginning of the next Parliament, which, as I described, allows us to see tracked changes at the end of the Committee stage, will also allow access to the Explanatory Notes alongside it. What the noble Lord is suggesting is in train if it has not yet been implemented.

Sudan: Bombardment of Civilians

Question

3.15 pm

Asked by **Baroness Cox**

To ask Her Majesty's Government what is their assessment of recent developments in Sudan, with particular reference to the continuing aerial bombardment of civilians in Southern Kordofan and Blue Nile states.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Northover)

(LD): My Lords, recent developments in Sudan's conflict zones are deeply concerning. Continued attacks on civilian populations, including in South Kordofan and Blue Nile states, are entirely unacceptable. We continue to support the mediation work of President Mbeki's AU panel and to emphasise to all sides that the only resolution to these conflicts is through political dialogue, not military means.

Baroness Cox (CB): My Lords, I thank the Minister for her reply. Is she aware that I recently visited Blue Nile state and witnessed first hand the devastating effects of the Government of Sudan's escalating aerial bombardment, which deliberately targets schools, hospitals, markets and people trying to grow crops? People cannot grow food and many hundreds have died of starvation. The bombers now come equipped with search-lights so that they can kill by night as well as by day. Over half a million people have fled their homes and are hiding in snake-infested caves, in river banks and under trees. What are Her Majesty's Government actually doing to call the Government of Sudan to account and end the impunity with which they are perpetrating this de facto genocide?

Baroness Northover: I am aware of the noble Baroness's visit and I thank her for the report that she issued after it. I commend her for her commitment to this incredibly dangerous region.

Noble Lords: Hear, hear.

Baroness Northover: We pressed the Government of Sudan and their armed forces to cease attacks on civilians and to comply with international humanitarian law. We have consistently raised the two areas in the UN Security Council and the Human Rights Council and, through our embassy work, we seek to highlight the importance of the rule of law and promote a culture of accountability throughout Sudan. We are working very hard to try to get that across.

Baroness Kinnock of Holyhead (Lab): My Lords, what has been the Security Council's response to the Human Rights Watch reports of horrific incidents of mass rape in Darfur and the continuing insecurity and impunity in that region? When will al-Bashir and his Janjaweed be called to account? We are now watching a terrible new phase of genocide in Darfur—and, I am afraid, in silence.

Baroness Northover: The noble Baroness highlights some very grave problems in Sudan, and she will I am sure also know that the UN independent expert on human rights in Sudan is looking at the human rights situation there. We are very concerned that that is taken forward. In terms of sexual violence, she will know that it appears to be an area where rape is being used as a deliberate weapon of war. We are pressing the Sudanese Government to try to take forward protection of civilians, but she will be acutely aware of how challenging that is proving to be.

The Archbishop of Canterbury: My Lords, during two visits to South Sudan last year, both in Juba and in the fighting area, it was evident that there was widespread belief and evidence that the Government of Sudan were not only interfering in South Kordofan, Blue Nile and Darfur with these terrible acts, but seek further to destabilise the already terrible situation in South Sudan. What steps do this Government believe should be taken and what steps are they taking with the international community to stop this cross-border interference?

Baroness Northover: The cross-border area is again a very difficult area to be working in. Our sense of things in terms of South Sudan is that we have huge challenges there in trying to get the parties to some kind of agreement. The Government of Sudan themselves are playing a non-obstructive role generally speaking. However, given all the instability on the border that the most reverend Primate talks about, it is exceptionally difficult.

Lord Avebury (LD): My Lords, does my noble friend recognise and do the Government recognise that the genocidal Government of Field Marshal al-Bashir and his generals, many of whom have also been invited before the ICC, have adopted a deliberate plan to eradicate the SPLM/A by a programme of destruction of food crops, bombing of hospitals and other atrocities which have already led to the fleeing of 250,000 people from South Kordofan and Blue Nile to take refuge in Sudan and Ethiopia? When will the Government remind the United Nations of the duty to protect?

Baroness Northover: We have consistently stressed the need for the United Nations to be engaged in the two areas. Obviously, there are challenges when the United Nations is not allowed into the areas that it should be. When I was in Sudan about a month ago, we were pressing on the Government there that, if the United Nations wants to get in and feels that it is safe to, it should be able to. We pressed for the Security Council statement on 11 December, which called on all parties to refrain from acts of violence against civilians. The newly appointed independent expert is working on human rights abuses and we are urging him to take that further forward.

Lord Alton of Liverpool (CB): My Lords, does the Minister recall our exchange on 17 May 2012, when I asked her whether she concurred with the view of Dr Mukesh Kapila, formerly our high representative in Sudan, that the second genocide of the 21st century was unfolding in South Kordofan, Darfur being the first? In her reply she said that,

“it is clear that there have been indiscriminate attacks on civilians and war crimes”.—[*Official Report*, 17/5/12; col. 526.]

In the nearly three years that have elapsed since then, during which an estimated 2,500 bombs have been dropped on civilian targets, why has the international community totally failed to prevent this horrific carnage, failed systematically to collect the evidence, failed to establish an international committee of inquiry, and failed to hold anyone to account for these atrocities?

Baroness Northover: I do remember that exchange and I remember the discussions we had after that question as well—as no doubt the noble Lord does—and

the sensitivity of what we did in trying to make sure that we were able to get humanitarian organisations in, which we are seeking to do. We are extremely concerned to make sure that that access is there. It is indeed a very challenging situation and we would hold both sides to account. Certainly, in terms of what the Government of Sudan have been doing, we have enormous concerns and address this through the human rights activities that I was talking about.

Regulatory Agencies: Monitoring

Question

3.22 pm

Asked by **Lord Smith of Clifton**

To ask Her Majesty's Government, further to the Written Answer by Baroness Neville-Rolfe on 26 January (HL4107), how the activities of regulatory agencies are monitored to ensure their effectiveness in the scrutiny of the economic and public sectors they supervise.

Lord Wallace of Saltaire (LD): My Lords, the monitoring arrangements for each regulator depend on how each has been established by statute, such as the different degrees of independence granted by Parliament to each regulator and different sources of funding. Some regulators are non-ministerial departments and are monitored and managed by their sponsoring ministerial department; others are non-departmental public bodies, which are subject to triennial reviews.

Lord Smith of Clifton (LD): My Lords, I thank my noble friend for that rather confused answer as to the situation. During this Parliament there have been many complaints about regulators, including those dealing with care quality and police complaints. Who will guard the guardians? Would my noble friend agree with me that there should be an overarching regulator to look at Ofcom, Ofsted, Ofwat, Ofgem and the like? It might be called the “Effectiveness Office”, otherwise known as “Eff Off” for short.

Lord Wallace of Saltaire: That was a good joke, my Lords, but this is a highly complex area in which quite naturally Parliament wishes some regulatory bodies to have a good deal of independence from the Government. There has been much discussion in this Chamber recently about the Equality and Human Rights Commission and how that should be maintained at considerable distance from the Government. On the other hand, the Care Quality Commission, for example, rightly is regarded as something which needs to be close to ministerial responsibility and on which Ministers are expected to answer to Parliament.

Lord Lea of Crondall (Lab): My Lords, I take the point that one does not wish to suggest that each regulatory body should be second-guessed day to day by any parliamentary process, but would it not be useful from time to time, given that many of these regulatory bodies are governed by secondary instruments covered by our committee structure here, to see what is happening at the interface, for example, with energy and transport? There are so many bodies where the

[LORD LEA OF CRONDALL]

interface is confusing. Consumers do not know where to go and are maybe pushed from one thing to another. Occasionally, some process should be found to review the accountability to the government department and, hence, to Parliament.

Lord Wallace of Saltaire: My Lords, these reviews do take place. The Environment Agency and Natural England were jointly subject to a triennial review, precisely to look at the degree of overlap. The noble Lord may recall that the Public Bodies Act examined the need for a number of statutorily established bodies that were set up a very long time ago and that the Deregulation Bill also touches on issues like this—125 triennial reviews of non-departmental public bodies have already taken place. I was interviewed for the triennial review into the Civil Service Commission, for example, which I think will recommend an expansion of the responsibilities of that body. A good deal of toing and froing is under way. Parliamentary committees and the National Audit Office also monitor the management of these bodies.

Lord Spicer (Con): My Lords, is there not a danger of a parallel government arising of unelected regulators working with enormous powers over the heights of the economy and working in concert?

Lord Wallace of Saltaire: My Lords, the idea that these are massively powerful bodies operating outside parliamentary control is an immense exaggeration. If you look at recent appearances by the heads of some of these commissions and authorities before parliamentary Select Committees, you will recognise that Parliament certainly monitors what goes on very actively.

Lord Foulkes of Cumnock (Lab): My Lords, will the Government consider supporting my Private Member's Bill to set up a regulatory body to supervise the conduct of political polling, including by multimillionaires?

Lord Wallace of Saltaire: My Lords, I cannot begin to think who the noble Lord might be referring to, but I look forward with interest to him showing me his Bill.

Baroness Deech (CB): Is the Minister aware that all 10 legal regulators, which operate underneath the Legal Services Board, agree that the board and the statute that put it into place are not working well and need radical reform? Can he say whether, if he is in government after May, a new Government will find time to reform it, which is what the regulators all want?

Lord Wallace of Saltaire: My Lords, I will certainly take that back if I am in government after May. I hope I shall not still be the oldest member of the Government.

Defence Budget

Question

3.27 pm

Asked by **Lord West of Spithead**

To ask Her Majesty's Government what assessment they have made of the Head of the United States Army's statement that he is "very concerned" about cuts to Britain's defence budget.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): My Lords, we remain a strong and capable defence partner of the United States. We are able to fight alongside US forces anywhere in the world and are demonstrating this once again as the largest partner in the coalition effort against ISIL. We have the second largest defence budget in NATO, are meeting the target of 2% of GDP on defence spending and will spend more than £160 billion over the next 10 years equipping the Armed Forces.

Lord West of Spithead (Lab): My Lords, I thank the Minister for that Answer but have to say that it is horrifyingly complacent. For more than three years now, through the back channels, the Americans—the three services, the intelligence community and those on the Hill—have been expressing concern about our spend and the reductions in it. It is time now to be honest with our nation: our military capability has been cut by 20% to 30% since 2010. That is a huge reduction. Next year, in 2015-16, the percentage of GDP spent on defence will be 1.88%, the lowest for 25 years. There is a generation of leaders who believe that peace is the natural order of things and that wars are inconceivable. However, war drums are beating in eastern Europe, and it is time we sent a strong message of deterrence through our military capability—because military forces deter. Will the Minister talk with the Prime Minister, and ask him to talk with the leader of the Opposition, to maybe come to an agreement that both parties should make a commitment to spending 2% of GDP on defence, to take this out of the political arena? I would have suggested having the Lib Dems join in that discussion, but most Lib Dems, I am afraid, with some notable exceptions, want a reduction, rather like the Green Party.

Lord Astor of Hever: My Lords, I will take the noble Lord's suggestion back to my department, but we will meet the 2% target this year and next. Decisions on defence spending will then be made in the next spending review. However, the Prime Minister is clear that there will be an annual 1% real terms increase in spending on defence equipment. We are committed to ensuring that Britain's Armed Forces remain among the most advanced and capable, able to protect our security interests across the globe.

Lord Craig of Radley (CB): My Lords, the Minister mentioned the Government's commitment to a 1% increase on equipment, but he did not make it clear whether this would be a 1% increase on the defence budget. Perhaps he could do that now.

Lord Astor of Hever: I can confirm that it is on the defence budget.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, before we dive overboard in pursuit of this gold-braid chorus calling for lashings of extra defence spending, can we stop for a moment to reflect? When the party of the noble Lord, Lord West, was in office, it presided over a £30 billion excess in defence expenditure, which left a black hole that this Government had to cope with. It also presided over some of the most egregious military decisions of our time, in Iraq and

Afghanistan. Surely that would cause us to believe that an excessive enthusiasm in according credibility to these calls is not required at this moment.

Lord Astor of Hever: My noble friend mentioned the previous Government's £30 billion defence budget. We now have a £34 billion defence budget and because it has been brought back into balance, we are able to invest in the latest military equipment in the coming decade.

Lord Dannatt (CB): My Lords—

Baroness Liddell of Coatdyke (Lab): My Lords—

Earl Attlee (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): Order. I am sorry to have to get to my feet, but if we are taking it in turns, it is the turn of the Labour Benches.

Baroness Liddell of Coatdyke: Will the Minister say what assessment has been made in the Ministry of Defence of the costs of the total realignment of our defence capability should we lose the collective security of NATO as a consequence of losing our Trident nuclear deterrent?

Lord Astor of Hever: My Lords, I assume that someone is working on those figures. The Government do not gamble with Britain's national security. The primary responsibility of Government is the defence of the UK and its citizens. We cannot rule out a future nuclear threat to the UK, and therefore need a credible nuclear capability. Maintaining continuous at-sea deterrence is the best way to deter the most extreme threat to the UK. To clarify my answer to the noble and gallant Lord, Lord Craig, the 1% is not on the defence budget—it is on the equipment spend within the defence budget.

Lord King of Bridgwater (Con): Undoubtedly we face a dangerous and uncertain world. I welcome the Minister's statement. I have more confidence in supporting a Government who have shown the ability to manage the economy and have the best chance of maintaining our level of defence expenditure than I would have if we again found ourselves unable to afford to do it.

Lord Astor of Hever: I agree entirely with my noble friend. We need a strong economy to have strong Armed Forces.

Lord Dannatt: My Lords, does the Minister agree that however welcome his message is of a 1% increase in defence equipment expenditure, this does not address the whole defence budget? Does he furthermore agree that we should salute the bravery of Lance Corporal Leakey, who won the Victoria Cross recently? This underlines that it is our military manpower that makes the British Armed Forces what they are, not a 1% increase in expenditure, because when there has to be a cut, it comes in manpower. When I commanded the Army, it was 102,000 strong. Now, four or five years later, it is 82,000.

Lord Astor of Hever: My Lords, I agree with the noble Lord and salute the recent recipient of the Victoria Cross. The Prime Minister has made it very clear that he does not want any reduction in the numbers of the Armed Forces below the level at which they are now, and he remains committed to growing the Reserves to 35,000.

Lord Davies of Stamford (Lab): My Lords—

Baroness Symons of Vernham Dean (Lab): My Lords—

Lord Howell of Guildford (Con): My Lords—

Baroness Stowell of Beeston: Order. If we are taking it in turns, it is the turn of those on the Labour Benches, but there are two Labour Peers seeking to get in.

Baroness Symons of Vernham Dean: My Lords, the Minister said that it is the primary responsibility of Government to provide for the security and defence of the country. Does he not therefore acknowledge that the defence budget needs as much security in its expenditure as Parliament has already given to its expenditure on international aid?

Lord Astor of Hever: My Lords, the coalition agreement stated that we will honour our commitment to spend 0.7% of GNI on overseas aid from 2013 and enshrine that in law. Those funds are being used for very worthwhile causes. For instance, DfID has contributed £35 million to our efforts to tackle ebola in West Africa.

Lord Howell of Guildford: My Lords, does the Minister agree that although the noble Lord, Lord West, and others are quite right in wanting our Armed Forces to be fully and properly equipped, nevertheless, in modern conditions, large areas of defending the national security and safety of our citizens and the British nation lie outside the classical definition of defence expenditure? Does he not agree that they should be taken more into account, because they are part of the defence of this nation in future—a matter which I am not sure that the American general who spoke the other day fully comprehended?

Lord Astor of Hever: My noble friend mentioned hybrid warfare in a question last week, and there is also the very serious issue of cyber warfare, so I entirely agree with him.

National Minimum Wage Regulations 2015

Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015

Motions to Approve

3.36 pm

Moved by Lord Popat

That the draft regulations and order laid before the House on 27 and 28 January be approved.

Relevant documents: 21st and 22nd Reports from the Joint Committee on Statutory Instruments. Considered in Grand Committee on 2 March.

Motions agreed.

Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015

Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015

Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015
Motions to Approve

3.37 pm

Moved by Lord Newby

That the draft orders and regulations laid before the House on 17 December 2014, 21 and 29 January and 3 February 2015 be approved.

Relevant documents: 17th, 21st and 22nd Reports from the Joint Committee on Statutory Instruments and 24th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument). Considered in Grand Committee on 2 March.

Motions agreed.

Self-build and Custom Housebuilding Bill
Order of Commitment Discharged

3.38 pm

Moved by Lord Best

That the order of commitment be discharged.

Lord Best (CB): My Lords, I understand that no amendments have been tabled to the Bill and no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Therefore, unless any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Modern Slavery Bill
Third Reading

3.39 pm

Clause 43: Duty to co-operate with Commissioner

Amendment 1

Moved by Baroness Garden of Frognal

1: Clause 43, page 35, line 37, at end insert—

“(10) Regulations under subsection (7), (8) or (9) which add a public authority to Schedule 3 may contain provision modifying the application of this section in relation to that authority.”

Baroness Garden of Frognal (LD): My Lords, I shall also speak to government Amendments 5, 7 and 8. As noble Lords will be aware, on Report the House agreed amendments which specified an initial list of public authorities which will be subject to the duty to co-operate with the Independent Anti-slavery Commissioner. During that debate the noble and learned Baroness, Lady Butler-Sloss, indicated that the Crown Prosecution Service and the College of Policing should perhaps be added to this list. On that occasion, I indicated that the Government would keep the list under review and consider, ahead of Third Reading, whether an ability to tailor the duty to individual public authorities would be helpful.

Our experience from working on the initial list of public authorities is that some authorities have existing remits or duties which could conflict with the duty to co-operate. In the case of NHS trusts, we needed to make clear that patient confidentiality would be respected before they could become part of the duty. I want to ensure that it is possible to extend the list of bodies subject to the duty to co-operate in future, in light of that experience. Today, I am therefore putting forward amendments that will ensure that where we subject a public authority to the duty to co-operate by regulations, we can tailor the duty to co-operate to reflect the particular functions or legislative framework of that public authority.

The aim of this measure is to ensure that we can apply the duty to co-operate to more bodies relevant to the commissioner’s role in future. To assure Parliament that this duty will be used only appropriately, and will not inappropriately circumscribe the duty to co-operate in respect of a particular public authority, it will be subject to the affirmative procedure or the equivalent in the devolved legislatures. I hope that the House will feel able to support these amendments, which aim to ensure that the duty to co-operate can be extended practically to other public authorities. I beg to move.

Baroness Butler-Sloss (CB): I am delighted with those amendments.

Amendment 1 agreed.

Clause 50: Regulations about identifying and supporting victims

Amendment 2

Moved by Lord McColl of Dubwich

2: Clause 50, page 39, line 34, at end insert—

“() Regulations under subsection (1) must set out—

- (a) what services will be provided to meet international obligations for the physical, psychological and social recovery of victims;
- (b) how the services will be provided to meet international obligations in respect of a victim’s consent, safety or other special needs;
- (c) that provision of services must not be made conditional on the victim assisting with a criminal investigation or prosecution; and
- (d) how the services will be monitored and audited.”

Lord McColl of Dulwich (Con): My Lords, Amendment 2 is in my name and would clarify the content of regulations that may be introduced under Clause 50 for the provision of support and assistance to victims. I have spoken both in Committee and on Report about the importance of putting support and assistance provision into legislation and, in particular, the benefit of setting out the minimum range of support and assistance to be provided. There are three key reasons why I continue to think that this is important.

First, it will give confidence to victims and support workers that they will receive support and therefore it will encourage more victims to come forward to seek help. This point of view has been expressed by victims' organisations and the pre-legislative evidence review, chaired by Mr Frank Field MP. Secondly, putting the basic principles of support and assistance into legislation will provide a strong framework to ensure consistent standards and availability of care across the country, strengthened by monitoring and auditing mechanisms.

The third reason for putting details of support and assistance into legislation is that it will ensure that provision will meet our obligations by allowing parliamentary scrutiny in a way which policy provision alone cannot. The review of the NRM was extremely welcome, although it was disappointing that it found many of the same problems identified by the evaluation report of the Council of Europe group of experts known as GRETA when it visited four years earlier in 2011. Putting support and assistance provisions into domestic law will focus the attention of the Government in a way that international obligations have not.

3.45 pm

It is a matter of some regret for me that we have not been able to add detailed support and assistance provisions to the Bill. I am grateful to the Minister for giving the option of secondary legislation at some point in future and I hope that it will not be long before we see those regulations. However, I continue to have concerns about the disparity in statutory rights between victims in England and Wales and those elsewhere in the UK. As I have said, I continue to believe that there is a great benefit for victims by putting these provisions into legislation. I therefore strongly encourage whoever might be in leadership in the Home Office when the NRM pilots are completed to use the enabling power under Clause 50 and to put support and assistance provision into regulations. I can assure your Lordships that when the evaluation of these pilots is published we will be looking at it very carefully and will continue to raise this matter with whoever is responsible.

Although Amendment 2 does not put support and assistance into primary legislation, nor does it alter the enabling nature of Clause 50, I have introduced it because I believe we need clarity about the content of the secondary legislation about support and assistance, just as we have done in Clause 48, which gives rather more specific direction about the matters to be contained in regulations for independent child trafficking advocates.

On Report, during the debate on the introduction of this clause and my amendment on the subject, various noble Lords urged the Minister to consider further. The noble Baroness, Lady Grey-Thompson, specifically highlighted the absence of any mention of

the kinds of support and assistance in the new enabling clause and asked the Minister to,

“reflect on whether a reference to the types of assistance set out in the convention and directive could be added to the reference to guidance in Clause 49 and the enabling clause”.—[*Official Report*, 25/2/15; col. 1679.]

The enabling clause is Clause 50. The noble Baroness, Lady Howe, expressed concern about the varying standards of care and welcomed the provision in my Report stage amendment regarding minimum standards and auditing processes. The noble Baroness asked the Minister to,

“reflect on how key elements ensuring consistency in standards of care might be incorporated into the regulations that he proposes”.—[*Official Report*, 25/2/15; col. 1681.]

The noble Lord, Lord Rosser, invited the Minister to look further at the need to give greater detail about the minimum level of assistance to be provided and the circumstances of that provision. I was grateful for the Minister's response that he would reflect further on the comments made in the debate. I was rather hoping that the Government might introduce an amendment such as mine in order to provide the assurance and clarity that your Lordships had been seeking during our Report stage debate.

Amendment 2 gives an indication of the matters that should be covered in the regulations for providing support and assistance to victims under Clause 50. It ensures that the support and assistance under the regulations will fulfil international obligations and sets out clearly, as per the Council of Europe convention, that support should be for victims' physical, psychological and social recovery. It also stipulates that the support and assistance should be provided in a manner that adheres to international treaties and in particular taking account of issues to do with the victim's consent to receive support, their need for safety and any special needs that the victim might have, such as disability or illness. The amendment also makes it clear that support must not be conditional on a victim acting as a witness. Additionally, the amendment requires the regulations to address how support services will be monitored and audited to ensure that standards are being met.

I welcome the Minister's comments on Report that Clause 50 will allow for regulations to be made about accommodation, financial assistance, assistance in obtaining healthcare and the provision of information, translation and interpretation services, which are the kinds of support detailed in the convention and the EU directive. However, the fact that the clause allows such details to be included in regulations is not the same as directing that they should be covered. Can the Minister confirm that it is the Government's intention that regulations under Clause 50 and guidance on this topic under Clause 49 should cover the specific points I have outlined in my Amendment 2 about both the types of support and the manner in which it is provided?

I was also grateful for the Minister's comments at Report regarding the inclusion of minimum standards in the tendering process for the new victim care contract. Can he give further details of the processes to provide the routine inspection of care provision under the contract that he also referred to at Report?

[LORD McCOLL OF DULWICH]

As I conclude my speech at the end of the passage of this Bill, in which I am proud to have played a small part, along with so many others in this House and in another place, I express my thanks to the Minister for the open and constructive way in which he steered this Bill through your Lordships' House. I sincerely hope that our aspirations that this piece of legislation will make a difference to victims will be borne out in the months and years to come. I shall certainly be watching its progress and implementation carefully to ensure that the assistance and support provided in England and Wales meets our international obligations and is of a consistent standard.

Baroness Howe of Idlicote (CB): My Lords, I should like to add a few words in support of Amendment 2 in the name of the noble Lord, Lord McColl, who has made a convincing case today and on previous occasions for why measures about support and assistance, in accordance with our obligations under international treaties, should be put into statute. I agree with the noble Lord that it would give confidence to victims, improve access to support and establish a consistent quality of care for victims, wherever they might be or whatever their personal circumstances. I am particularly concerned that continuing with a policy-based approach will perpetuate the scope for failures in support provision identified by the NRM review, but highlighted by many NGOs and the Council of Europe GRETA report a long time before the NRM review took place.

Flexibility to respond to changing circumstances is important, but it must not come at the cost of meeting our international obligations and ensuring that all victims receive the support they are entitled to and at a proper standard. I welcome the inclusion of Clause 50 in the Bill and very much hope that, before too long, we will see the introduction of regulations that Clause 50 enables. As the noble Lord, Lord McColl, has said, during Report I was one of those who asked the Minister whether he would consider incorporating something into the regulations under Clause 50. Specifically, I asked if he might look at adding,

“key elements ensuring consistency in standards of care”.—[*Official Report*, 25/2/15; col. 1681.]

Amendment 2 would provide the necessary direction to ensure that the regulations promote that consistency. I am particularly interested to hear from the Minister why he does not believe it valuable to add such elements to Clause 50. If, as I suspect it might, the Minister's answer points to the guidance in Clause 49, perhaps he could indicate why that clause similarly contains no details about the international reference points for the guidance or even that the guidance should cover the elements of providing support set out in Amendment 2—that is, the types of support, the manner and circumstances in which support is provided and provisions for monitoring support.

As the noble Lord, Lord McColl, noted, the requirements for the regulations about independent child trafficking advocates are far more specific about what needs to be covered, than either the reference to guidance in Clause 49 or the regulations in Clause 50.

I would also like to ask the Minister how the Government intend to ensure consistent standards in victim care provision without reference to them in the

Bill. For example, can he give details of the minimum standards to which the care providers will be held, and the inspections referred to by him on Report? Will he also indicate whether—and, if so, where—those minimum standards of care have been published? At the end of this remarkable landmark Bill, I am still very disappointed that the Government have not introduced amendments on this matter. I very much look forward to the Minister's comments.

Lord Hylton (CB): My Lords, it is not just trafficked people who need physical, psychological and social support when they arrive here; the same is true of many asylum seekers who have experienced torture, rape and imprisonment as well as arduous journeys to get here. Many Members of both Houses have pointed this out on successive immigration and asylum Bills. However, I am not sure that the Home Office yet fully reflects these points in its day-to-day practice, particularly as regards women asylum applicants. I strongly support the amendment.

Baroness Butler-Sloss: My Lords, the points made in this amendment seem to me of considerable importance. However, if the Minister could go back to his department and be reasonably certain that these aspects will be reflected in the regulations, it would not be necessary to test the opinion of the House.

Lord Rosser (Lab): I will make a few brief comments, largely in line with the views that have already been expressed. A number of noble Lords have already referred to the Minister's comment on Report that the government amendments would,

“allow for regulations to be made about accommodation, financial assistance, assistance in obtaining healthcare ... the provision of information, and translation and interpretation services where a person is a victim of modern slavery or there are reasonable grounds to believe that they are”.—[*Official Report*, 25/2/15; col. 1684.]

However, the indications that the Minister gave about what could be included in regulations did not appear in the enabling clause and are not in the Bill. That is precisely the point that the noble Lord, Lord McColl, made.

I assume that the Minister does not intend to accept the amendment—I think that he would already have indicated if it was his intention to do so. However, as has been pointed out, we are facing the prospect that victims of trafficking in England and Wales will have fewer statutory rights than victims in Scotland and Northern Ireland, where statutory support services are set out in detail in the relevant legislation. As the noble Lord, Lord McColl of Dulwich, said, the purpose of his amendment is to provide clarity at least about the fundamental principles of support.

I ask the Minister only to give a helpful response to the amendment. He has been asked in particular to commit to the various issues that he said the regulations could cover. Will he stand up now and say that they are not, in that sense, meaningless words and that the regulations will cover the specific issues to which he referred when he spoke on Report? Ideally, noble Lords would like to see this in the Bill—but if the Minister is not able to agree to that, I hope that he might at least be able to say something rather firmer that will leave people with a very clear view that these issues most certainly will be in the regulations when they come out.

4 pm

The Parliamentary Under-Secretary of State, Home Office (Lord Bates) (Con): My Lords, I will be able to say something further on the record today, which I hope will go some way towards reassuring my noble friend and other noble Lords on this important matter.

It might be helpful for the House to reflect on where we have come on this particular part of the Bill's journey, which relates to identification and support. We had Jeremy Oppenheim's review of the NRM, which was widely welcomed and appreciated on all sides of the House. It is important to remember that Jeremy Oppenheim stopped short of suggesting that there ought to be a statutory footing for this. He said that he felt that would take away from the flexibility of tailoring support to the needs of potential victims. He argued that it would be better not to put it on a statutory footing. We had that debate in Committee, with the very helpful support of the noble and learned Baroness, Lady Butler-Sloss, and my noble friend Lady Hamwee, as I recall.

We then came forward with this enabling clause to say that we could enable the Government to bring forward regulations under the Bill. We then said that we would ensure that the services are working as effectively as possible and that we would have two pilot schemes, which will be set up in the next few weeks. They will test out the recommendations that have been put forward on identification and care in the Oppenheim review, along with other recommendations that have been made. We then said that, following those pilots, the guidance that will be produced will be subject to a public consultation.

I am going to some length to spell this out because someone looking at this amendment in isolation might think that the subject matter we are talking about, namely what services and care we provide to the victims of these crimes and how, which is of fundamental importance, is not stated anywhere—that it is somehow in the ether. The point I made in the past, and which I will make again, is that Her Majesty's Government currently comply with all our international obligations under the EU directives and the convention. All we are talking about in this clause is what more we will do to go even further than our obligations require us to do. The idea that we are somehow going to drop below that threshold is simply not there.

When it comes to the amendment, we have some very specific difficulties with one or two of its provisions. I say to my noble friend, who has played such a pivotal role in bringing this legislation forward, that this has not been passed off lightly. The noble Lord, Lord Rosser, talked about the words which I used at Report and then asked whether the Government would be bringing forward their own amendment in respect of this. We have gone through this painstakingly to see whether we can do this, but we feel that to do so would be effectively to prejudge all the very good stages of consultation, pilots and testing which we have put in place. That is the only reason why we are not in a position to support the amendment in its current form. However, I want to put some additional remarks on the record and to answer the very clear questions which were made by the noble Lord, Lord Rosser, and the noble Baroness, Lady Howe, so I will seek to do that.

The quality of identification and support for victims is a critical issue. As I have said before, the victim is at the heart of the Government's approach to tackling modern slavery. Given the importance of ensuring appropriate assistance and support for victims, I entirely understand the sentiment behind this amendment and I believe I can put on the record some remarks today which will give the noble Lord and the House reassurance on this issue. The Government are fully committed to meeting our international obligations in respect of support for victims. In fact, we provide more than the minimum set out in our international obligations. I want to be clear about the intention of the new enabling power in respect of identifying and supporting victims which is that any regulations made under this clause will be fully in line with our international obligations.

The amendment also raises the important issue of the monitoring and auditing of standards of care, which the noble Baroness, Lady Howe, mentioned. Standards of care are integral to the victim care contract and the lead contractor—currently the Salvation Army—will ensure that it and any subcontractor comply with the requirements set out in the contract. These include safe accommodation, access to interpretation services, which the noble Lord, Lord Rosser, asked me to repeat, and all other international obligations relating to support provisions. All service providers must be registered with the Care Quality Commission, which monitors, inspects and regulates care services to ensure that they provide people with safe, effective and high-quality care based on their needs and encourages providers to make improvements.

We want to see further improvements in identification and support of victims. That is why we are piloting the transformational recommendations of the national referral mechanism review to ensure that we get it right. It is also why we have committed to a formal public consultation to develop statutory guidance, under Clause 49, on victim identification and support. This will ensure that non-governmental organisations and others with expertise can help the Government to further improve the identification and support of victims.

I have some specific concerns. Given the period of major change that the NRM is currently going through, I would caution against specifying what the regulations must contain before the results of the pilots and the consultation on the guidance have helped us to frame future regulations. I also have concerns about the potential implications of the wording of the amendment, which could, for example, arguably conflict with the UK's current policy of providing discretionary leave to victims where they are supporting a police investigation under our international obligations.

The regulations will be subject to the affirmative procedure, so Parliament will have an opportunity to comment on them before they are passed. Given that we have already come a long way on the issue by including an enabling power in the Bill and given the assurances I have provided about our international obligations, I ask my noble friend to reflect further on his amendment.

I will just deal with a couple of other issues. The first one is the point made by the noble and learned Baroness, Lady Butler-Sloss, who asked whether the

[LORD BATES]

regulations will include information about our international obligations. The answer is, yes, the regulations will include the international obligations we have discussed, including the type of victim support set out in the Council of Europe conventions. To distil this down to a fine point, which my noble friend was eager to ensure: when the guidance comes forward in statutory form, will it spell out what is going to be provided? I can say unequivocally that the answer to that is yes. That is reinforced on page 62 of the *Modern Slavery Strategy* document. It is further cross-referenced in the NRM review, which on page 38 makes many recommendations about the nature of the identification and support which should be given for this. The Government have stated categorically that we support in principle all the recommendations which have been made in the NRM review.

I am grateful to my noble friend for seeking those reassurances. I hope that he will see that we have been genuine in our desire to find a way in which we can address his concerns. We have not been able to do it by accepting this amendment, but I hope that the additional words which I have been able to put on the record from the Dispatch Box today will give him the reassurance he seeks and enable him to withdraw his amendment.

Lord McColl of Dulwich: I thank all noble Lords for their contributions, not only on this occasion but over many months. I thank the Minister for coming some way to allay our worries. I am very grateful to him for all the trouble he has taken and for the very gracious way in which he has coped with the conduct of this Bill. I thank him very much and beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Clause 54: Transparency in supply chains etc

Amendment 3

Moved by Lord Alton of Liverpool

3: Clause 54, page 42, line 44, at end insert—

“(11A) The Secretary of State may by regulations appoint an organisation or an individual to collate slavery and human trafficking statements, and to maintain a website on which to publish those statements in a form in which the published data is searchable by members of the public without charge.”

Lord Alton of Liverpool (CB): My Lords, in introducing Amendments 3 and 6 to Clauses 54 and 57, which are based on Amendments 97A, 98A and 99A which we discussed on Report, I am grateful to my noble friend Lady Young of Hornsey, the right reverend Prelate the Bishop of Derby and the noble Baroness, Lady Kennedy of Cradley, for adding their names and to other noble Lords in all parts of the House for the support they have expressed for the principles in these amendments at all stages, not least the noble Baroness, Lady Mobarik, on the government Benches, and my noble friend Lord Sandwich, who spoke at earlier stages of the Bill on the issues raised in these amendments.

I start by reiterating the welcome I gave in Committee and on Report for Part 6, which is undoubtedly a major step forward in ensuring that supply chains are not being infiltrated by modern slavery. I return to the issue that I raised at Second Reading, in Committee and on Report and, indeed, through public correspondence in the correspondence columns of the *Times*. Noble Lords may have seen some of the letters that were signed by several Members of your Lordships' House. At every stage of our proceedings when I have raised the issue, the Minister, the noble Lord, Lord Bates, has been most attentive and very generous with his time in listening to suggestions on how this part of the Bill might be improved and strengthened. I join others in echoing the remarks made on the previous group of amendments by the noble Lord, Lord McColl, who said how grateful we have all been for the way in which the Minister has engaged. I hope that we will see that again today when he comes to respond to these amendments, although I recognise that the way in which government works may well mean that he has perhaps not been able to gain the support of other arms of government. In those circumstances, only Parliament itself can make the decision, make the pace and ensure that if it believes that the principles in this amendment are worth incorporating, that is done.

These two amendments would allow, through regulation, for a central website to be established on which the slavery reports of businesses may be lodged. This has not only been supported by noble Lords; it has been consistently asked for by civil society groups, which have so much experience of working with businesses on supply chains. I was delighted to receive support from Amnesty International UK, Anti-Slavery International, CAFOD, the CORE coalition, Dalit Freedom Network UK, the Evangelical Alliance, Focus on Labour Exploitation, the Law Society, Quakers in Britain, Traidcraft, Unseen and War on Want. I am also grateful for the letter I received from the Equality and Human Rights Commission, which supported the principles outlined in the earlier Amendment 99A and reflected in the amendment today.

4.15 pm

Without the incorporation of a central repository for slavery and human trafficking statements, the role that the Minister outlined on Report for civil society, investors, consumers and other agencies in holding big business to account would be very difficult, if not nigh on impossible, to fulfil. Just reflect for a moment on the substantial obstacles to accessing annual turnover information that indicates the companies that fall within the compliance threshold, let alone the vast number of different websites that would have to be trawled through, and it is patently obvious why a central repository must be established.

The successful basis of any measure intended to increase transparency is the ability of the public to access information, and as the right reverend Prelate the Bishop of Derby said last week on Report,

“the modern tool for transparency is the website”.—[*Official Report*, 25/2/15; col. 1741.]

Doubts were expressed on Report about whether the proposal for a central website enjoys the full support of Kevin Hyland, the designate Independent Anti-slavery

Commissioner. I am glad to be able to tell your Lordships that, since Report, Mr Hyland has written me. These are his words:

“I can confirm I fully support the suggestion of a website as the central repository for reports as suggested by yourself and other noble Lords”.

He adds that without such a site and adequate resourcing of it,

“it will be unlikely to achieve the objective”,

but the creation of such a,

“repository with the right resource would, I believe, make a very positive difference”.

On Report, I also cited the highly responsible companies, some of which I met. The noble Lord, Lord Patel, and I met Primark. We also heard from Associated British Foods, and I know that some of your Lordships have heard from Sir Richard Branson and businessmen such as John Studzinski of Blackstone, who have argued for more transparency and equitable arrangements, so this is not a trivial matter. If we are serious about supply chains and tackling modern day slavery at source, our new commissioner says that this will “make a positive difference”, and I believe he is right.

Experience from overseas supports this judgment. Many noble Lords have been contacted by some of the groups involved in the implementation of the California Transparency in Supply Chains Act of 2010. They urge us to learn from their experience that people need to know which companies are required to comply with the law and that an official website to which companies upload their reports will be beneficial.

In a letter to the Minister, the Californian organisation Not For Sale said that the failure in California to create a centralised repository has made it,

“difficult to know which companies need to comply with the law, and which do not”.

In another letter, the Californian Coalition to Abolish Slavery and Trafficking say that the failure to make a provision of this sort has weakened the effectiveness of their legislation. Let us not make the same mistake.

On Monday this week, British church leaders also expressed their support for this provision, and 11 of them signed a letter in the *Daily Telegraph* urging the Government to incorporate into this Bill the principle of a central body to which businesses can report on what they are doing to eradicate slavery from their supply chains. Yesterday I was contacted by the Ethical Trading Initiative to express its support for this measure in general and for a central website in particular, which it regards as essential to achieving a level playing field. As noble Lords will be aware, the initiative is a coalition of major UK companies, trade unions and non-governmental organisations, including many familiar high street names that would be required to comply with this measure. It is worth hearing what they say:

“We would like to express our strong support for Clause 54 to ensure that a relevant government department or agency is appointed and resourced to publish a full list of all companies that are required to publish their statements on modern slavery in an accessible central website so that effective monitoring and accountability can be assured. We believe this would go a long way to levelling the playing field for ethical and responsible businesses, ensuring that they are not undercut by unscrupulous companies that operate under the radar of public scrutiny. We would

also like to know that this will be monitored and updated regularly and that the quality of information provided by companies is evaluated against established criteria”.

To this long list of supporters I would like to add the Minister himself, as on Report he accepted the principle, saying that,

“we want to see these statements in one place so that people can monitor and evaluate them to ensure that the intended action takes place”.—[*Official Report*, 25/2/15; col. 1750.]

However, sometimes, as we all know, Ministers, however good they are—and we have been fortunate in having one of the very best Ministers in the Government dealing with this Bill—are circumscribed by the limitations imposed by other departments whose officials may have other priorities. On such occasions, Parliament may need to insist on its own priorities, and we have a chance to do that today.

In conclusion, these amendments have attracted widespread support. They are necessary to enable full and meaningful public scrutiny under the transparency measure, and they will allow time for detailed questions on the resourcing and practicalities to be fully discussed before the regulations are made. I beg to move.

Baroness Kennedy of Cradley (Lab): My Lords, I speak in support of Amendments 3 and 6 in the name of the noble Lord, Lord Alton of Liverpool, to which I have added my name. I very much hope that they will get the Government’s support today, as there is much on which we all agree regarding this issue. There is agreement across the House that civil society is critical to the success of this part of the Bill, and there is agreement that we expect civil society to review the statements and add pressure where pressure is due. We want the amendments—we need them, even—in order to be able to scrutinise, analyse, and where necessary challenge, business; and, importantly, to praise businesses for the steps they take to eradicate slavery in their supply chains. If we want businesses to fulfil that role, we need to facilitate their doing so, and Amendments 3 and 6 would do that.

I have seen calculations that estimate that if the threshold figure of more than £60 million is used, more than 10,000 businesses will be obliged to produce a statement. If that is the case, it is absolutely inconceivable that civil society, businesses, which want to learn from each other, or indeed the Government, who want to ensure compliance with their legislation, will be able to review 10,000 statements without the use of technology. Technology gives us the power to access information and bring about real change, which is the intention behind this part of the Bill and behind the statements. Let technology do the hard administrative work and be the engine that really drives forward supply chain transparency. Those involved in the California Act recognised that there was a gap in their legislation. We should listen and learn from their experience and not repeat their mistakes. As the noble Lord, Lord Alton of Liverpool, said, this is an enabling amendment that allows the technology and the responsible organisation or individual in the future to be decided by regulation.

In conclusion, we have to harness the power that technology can give us to increase transparent supply chains and drive change. I hope that the Government will support the amendment.

The Lord Bishop of Derby: My Lords, I support these amendments and thank the noble Lord, Lord Alton, for his leadership. I associate myself with the remarks of the noble Baroness, Lady Kennedy, about websites and technology.

I have had the privilege of being in conversation with the Minister about the importance of this legislation and what we are trying to achieve for our country as a mark to the world: that is, helping business to develop and change its culture, and to take responsibility for good practice. Of course, the discipline of using a website will enable businesses to be accountable to their investors, their consumers and their shareholders in a transparent and open space. That will encourage good business practice and help the businesses that have fallen short to be challenged. Therefore, this very sensible and practical suggestion will not only help the Bill to achieve its objectives but will help the culture of business to change in a positive way and make the employment of people in slavery less likely.

I want to make a couple of other small points. Amendment 3 includes the word “may”. Therefore, it is inviting the Minister to agree to this direction of travel as a priority to deliver what we all want to achieve through the Bill. This has been a long journey and we have learnt a great deal on it. As other noble Lords have said, we have been extremely grateful for the way in which the Minister has listened, negotiated and developed the Bill appropriately when persuasion has been there. I think that that process will go on. The website will provide for learning to go on and, with practice, to develop.

My final point is that last week, in talking about the Gangmasters Licensing Authority, we were reminded that organisations like that were able to access proceeds of crime to help fund the work. If we need to find a way of funding a website, which could be quite labour-intensive in answering all the niggly questions to which people expect a reply, the proceeds of crime might be a proper place from which resourcing might be found.

Baroness Young of Hornsey (CB): My Lords, I support the amendment moved by my noble friend Lord Alton. The Minister has referred several times to the California Act during the passage of this Bill. In both Houses it has often been cited as a sort of reference point or a benchmark. We should learn from that experience. As has already been said, the Californians are saying that this is the one aspect that they regret having missed out on. They see the work embodied in the two amendments as an essential tool. The essence of this part of the Bill is transparency. We cannot have full transparency without information and knowledge.

As I said at earlier stages, many young people in particular, in the wake of disasters in the clothing industry such as Rana Plaza, are keen to know about the provenance of their clothing. As my noble friend Lord Alton has already noted, the internet is a key tool, and many young people—and some older people, too—use social media to communicate about companies they see as not upholding their values. Pressure from consumers is something that the Government have said they are keen on. It is a way of holding businesses to account and a way of ensuring that they think about their reputations and how to protect them.

Therefore, consumers have some power. However, while I argue that it is not solely down to consumers to keep a check on unscrupulous businesses, I accept that they have a role to play. Without the requisite knowledge and information it is hard to play any kind of role at all.

How could such a role be played without the kind of centralised information, the potential for which this amendment allows the Secretary of State to explore? Who, apart from specialist researchers, would even know which companies met the threshold for inclusion under the Bill, let alone find the required statements from those companies that would enable them to make their choices? I wish we could say that all companies are so concerned about reputational damage that they act in ethical and sustainable ways, but unfortunately they do not. That is one of the reasons why we need the Bill. Good businesses have said that transparency is an aid for them, not a burden. Given the widespread support for this measure in the House, from business, NGOs and, indeed consumers, I hope that the Minister, who, as everybody has said, has been so helpful in not just listening to what we have had to say but in acting on so many of the concerns expressed here and elsewhere, will take this opportunity to respond positively to the amendment and help the Government to become genuine world leaders on this aspect of the Bill.

Baroness Butler-Sloss: My Lords, I strongly support Part 6 of the Bill but, as the Minister knows very well, there is quite a big gap. If businesses are to produce reports, there is no point in having them if they are looked at only by their own people. They need to be subject to independent and transparent scrutiny. That has to go somewhere. It seems absolutely clear that there has to be a central, independent website.

During the Select Committee, a number of big businesses came to talk to us and made it clear that they wanted level playing fields. Like the noble Lord, Lord Alton, I have been talking to big businesses recently which are very interested in and supportive of the idea of a website. I actually suggested to two big businesses to which I spoke—I will not refer to them by name because it would be unfair—that they, with other big businesses in the UK, might put forward the money to put up a website. So it would be not a government website but an independent one, and the businesses that want a level playing field should be prepared to pay for it. According to the sort of companies I have been talking to, it should be a very large sum of money.

4.30 pm

I see this as something that might take some time, and the ethical trading organisation is one that it might very well work through, because it is involved with so many companies. It may be sensible for the Government to say, “Would you like to get big business?”. My idea was not thrown out as absolutely ridiculous. What companies were saying to me was, “We have to think about it”. So I am very aware that this would take some time, but it is important that, within a relatively short time, we have that transparency so that the companies which will be part of this system can have their reports scrutinised.

It seems to me that, if the Government are prepared to accept in principle that they should look at a website—and, preferably, get someone else to pay for it—and they think in principle that this is what should happen, it should not be necessary to have it in primary legislation. It should be either by regulation or set up through government agencies or by government pressure on independent companies. So I support the principle and very much hope that it is not necessary to take this further.

Lord Young of Norwood Green (Lab): My Lords, I declare an interest as the ex-vice-chair of the Ethical Trading Initiative. I have spent a good few years of my life discussing with companies, trade unions and NGOs the complexities of supply chains. The noble Lord, Lord Alton, spoke of the positive endorsement of the Ethical Trading Initiative, and I hope that the Minister will be able to respond positively.

Although I agree with most of what the noble and learned Baroness, Lady Butler-Sloss, said, I did not quite agree with the conclusion. It is a principle that is worth including in the Bill because we have to recognise that all these companies are on a journey. The complexities of global supply chains, which stretch far and wide, are not easy to monitor by any means. We know what happens when it goes wrong, as we saw in Rana Plaza in Bangladesh. That is just one example of many. There are lots of other examples where, unfortunately, bonded labour and child labour exist in supply chains. There is cross-party support for this amendment and there is absolutely no doubt about its importance. I, too, congratulate the Minister, who has displayed good diplomacy and a willingness to help to ensure that we make this Bill as strong and as effective as we can. This is a key part of the effectiveness of the Bill.

Surely what we are hoping to do in creating a website like this is “encourager les autres”, as they say—my French is not very good but it means to encourage the others. We want people to say, “Here are the examples of best practice. Here is what every company ought to be aspiring to do”.

I will not take up any further time because so many, such as my noble friend behind me, have made all the key technical points. I look forward to the Minister’s response.

Baroness Hamwee (LD): I certainly took from the Minister’s long and careful response to the amendments on this clause at the previous stage that he entirely took the points that are being made today. He said that all of us are willing and keen to accept the principle that the statements ought to be put in one place and made easily searchable and identifiable. I take it from that and from other comments that this is something that the Government are working on.

The Minister then mentioned a two-day tech-camp. Frankly, that sounds terrifying, but I wonder whether he has any news of that. He issued a generous invitation to Members of the House to attend it. I am not sure whether I would be up to it myself, but it sounds as though it holds the seeds for taking this matter forward and I hope that he can give us a little more news.

The Earl of Sandwich (CB): My Lords, Third Reading is an occasion for tributes and I hope that the Minister is not too embarrassed to receive all these tributes.

He has worked very passionately on the Bill and I congratulate him. We are asking a very small step of the Minister today. I mentioned this before. It was a small step then and remains small, although, even so, it may be the biggest step that he takes today.

My noble friend has put all the arguments so succinctly that I will not rehearse them. I add only one particular point, which is that I personally would not like to see the voluntary sector carrying the load of this responsibility. The way that the amendment is worded is very gentle. It states:

“The Secretary of State may by regulations appoint”.

It does not actually say that it has to be a government agency. That is the interesting thing about the amendment—it takes us just a very small step further.

I mentioned to the Minister at a private meeting that the situation of the groceries adjudicator may be a parallel to look at, but I would not want to wait for consultation. I do not agree with my noble and learned friend that we have to wait longer for that. I think that the House will decide today in favour of the amendment unless the Minister has something else.

Baroness Mobarik (Con): My Lords, I, too, add my name in support of the noble Lord’s amendment, which I believe will be helpful to both businesses and consumers. I am particularly pleased to note that the business community, through the Ethical Trading Initiative, has expressed its support. I echo what it said about the need for a level playing field. I am proud of what we have achieved on the Bill and I am committed to the journey that we have begun, so I very much hope that my noble friend will feel able to accept the amendment.

Lord Rosser: I will make one or two brief comments. I certainly do not want to repeat all the powerful arguments that have been put forward in support of these two amendments. But to reiterate what the noble Earl, Lord Sandwich, said a moment or two ago, this is an enabling power for the Secretary of State. The amendment states “may by regulations”. It does not say “must”, and it does not specify who should be appointed. It simply says,

“appoint an organisation or an individual”.

I would have hoped that the Minister would feel able to go down this road, since it does not make a very specific commitment but it gives a positive indication of the direction in which we should be going.

It is heartening to hear from the noble Lord, Lord Alton of Liverpool, that Mr Hyland is in favour of what is proposed in the amendment and has described it as being “able to make a positive difference”. I think that that was the wording that was used. I would only conclude by reiterating what the Minister himself said on Report. He said:

“I think it is more important to get the principle there—that we are saying, with all these statements coming together, that clearly they need to be in one place. Whether that is civil society, an NGO, a commissioner or a government body is something that can be sorted out. But the principle is that we want to see these statements in one place so that people can monitor and evaluate them to ensure that the intended action takes place”.—*[Official Report, 25/2/15; col. 1750.]*

I really cannot see the difficulty with this amendment, since it achieves precisely the thing that the Minister said that he and the Government want to achieve.

Lord Bates: First, I thank the noble Lord, Lord Alton—I think I want to thank him—for his amendment. In essence, it is like a number of these things. As the noble Lord, Lord Rosser, accurately surmised, we are more or less on the same page. The question is: do we at this stage want to have this written on the page, or do we want to leave it to something that we will come to a little later?

I sometimes get the sense—it might just be the Whip’s instinct in me—that people are preparing to take a run at testing the opinion of the House and they are galloping up the runway. I urge the noble Lord to bear with me a little while, while I try to set out what we are doing. I am putting on the record some things which I have not been able to put on the record before, but I am seeking to go further. I just ask him to keep an open mind as to whether at the end of this stage I have managed to convince him that, should he choose to withdraw, he will be withdrawing further down the path to where we all want to be at the end.

One of the key elements that we have here is another consultation going on at present about these very things. It is worth mentioning, because I genuinely want to flag it up and say that NGOs, companies and organisations—the Ethical Trading Initiative—would be people whom we would want to engage actively with this consultation, which was a concession; it was something which we said we would do in response to concerns raised in your Lordships’ House. We launched the consultation and it is open until 7 May. Question 13 on the consultation specifically asks:

“What would good practice look like ...?”.

When we deal with the publication of these statements, we hope that all the comments made here will be taken into that consultation, as well as the remarks which have been made about people who have been arguing passionately about this long before the clause was in the Bill. The noble Baroness, Lady Kennedy, led a very constructive debate on supply chains when the clause was not even a twinkle in the Home Office eye at that stage. It is in the Bill now and we are talking about how to make it work.

Much as I love the state of California, I find it an astounding gap that the home of Silicon Valley could not fathom out a way to create a website to consolidate all these statements in one place and make it easily searchable. That is a bit of a concern. One would think there would be lots of local companies—without naming any—which might be perfectly capable of doing that.

My noble friend Lady Hamwee asked me to report back on what had happened to the tech camp. It is actually just finishing and it is another element that I want to put in here. It was an initiative put forward by the Home Office in response to the precise question that the noble Lord put in his amendment. We set up the tech camp with the Home Office, Unseen, a charity which works with many trafficked people, and Deloitte consulting, which does a lot of work in the technology field. They have had two days looking at what solutions might exist in technology to enable this collation to take place very effectively. I cannot provide a read-out from the tech camp because it is meant to finish about now in St Paul’s in the City, although given that they are technical whizz-kids they probably clocked

off a couple of hours ago. I certainly undertake to give noble Lords a read-out from that important gathering.

I am grateful to the noble Lord, Lord Alton, for soliciting from Kevin Hyland the commitment of support that he has given. That is helpful. He is the Independent Anti-slavery Commissioner-designate, and we cannot therefore direct him to do things, but he is suggesting he might have a role. Of course the point here is that everybody is in principle in favour of doing this, but not until they know what will be involved. A key point, as mentioned by the noble Baroness, Lady Kennedy, is where the threshold is drawn for how many companies we will be talking about. Will it be tens of thousands or thousands? How many will we be dealing with? That will obviously impact on people’s views.

4.45 pm

I will put some comments on the record that I hope will help. It is important that we focus on the problem we are trying to solve—finding the best way for people to find and compare statements, whether that involves a central website or not. As we all know, technology is constantly evolving, improving and finding new solutions to old problems. As such, I am not yet convinced that a centrally controlled website established by legislation—the point the noble and learned Baroness made—would represent the most dynamic or effective way of increasing transparency and solving this problem in the long term.

For example, it might be that some kind of search engine or online comparison tool provides a more efficient means of finding and comparing statements. Internet platforms that draw information straight from the companies’ home websites would mean that the information could be verified more easily and that businesses could ensure that it was always up to date. The last thing we want is misinformation circulating about businesses on a second website, or an expensive and time-consuming process of validation to ensure that false or out-of-date statements are not being uploaded to a central website.

I ask my noble friend to record in particular that this is not to rule out a central website. I just think we should keep an open mind about how best to provide this service to investors, campaigners and the general public. To that end, we are taking action. Even since last week, in response to contributions, we have had the tech camp. As I explained on Report last week, this two-day event has brought together a number of different NGOs and technology companies. We are using this opportunity to talk directly to technology companies and to some of the businesses that will be producing these statements to determine the best options. I am pleased to say that discussions have already highlighted a number of interesting ideas which we want to pursue with the businesses as quickly as we can. These developments are really promising but simply do not require a legislative basis.

I reassure the noble Lord that the Government will be behind an effective solution to this issue, making sure it is easy to compare statements and working with partners to facilitate the true transparency that we all want. We can use the statutory guidance to tackle any steps needed to facilitate a solution and ensure that statements are as freely and as widely available as

possible. Doing this through guidance will mean that we can regularly update and refresh it to reflect technological change and ensure our best practice recommendations stay alive to future innovation.

As the House knows, we are currently consulting on that guidance, as I already mentioned. Although I entirely appreciate the sentiment behind the amendment, it does not take us any further than the powers that are already there for the Home Secretary, once this Bill is passed. Additionally, the Home Secretary can, if she wishes, allocate funds and appoint administratively a person within the Home Office to run a central website if that proves to be the right solution. The Home Secretary could also support, financially, an NGO or other external provider to provide a website, through providing technical support, funding or referring to it in the statutory guidance.

These debates have helped to ensure that the Government are focused on working with NGOs and businesses to develop an effective solution. The amendment does not provide for placing any new duties on businesses, so it would add nothing substantive to the Bill. Given the comments I have made about the capability that the Home Secretary has, the ongoing consultation and my clear statements on behalf of the Government expressing a desire to see these collected in one place, I ask whether this might be the reassurance that the noble Lord seeks, enabling him to withdraw his amendment and work with us to ensure that we bring this important innovation to fruition.

Lord Alton of Liverpool: My Lords, I am grateful to the Minister for the way he has addressed the issue. Whatever the outcome today, I will of course work with him, as I have done all the way through on this issue as we have considered these proceedings. The noble Lord, Lord Young of Norwood Green, gave us part of an old French saying about encouraging others. I think the first part of that saying is that you should shoot a few admirals to encourage the others—certain noble Lords are not here at the moment, so nobody will take that personally.

It is certainly not my desire that we should shoot this Minister—indeed any Minister, but not this one in particular. As I said in my opening remarks, the noble Lord, Lord Bates, has been exemplary in the way that he has dealt with the House throughout all our proceedings. He is a fine example to other Ministers in piloting legislation through your Lordships' House. He has offered us today a consultation which is under way, the “tech camp”, which the noble Baroness, Lady Hamwee, referred to earlier—which is welcome—and more guidance. In a way, at the end, he pointed to the difference that stands between us: whether something should be in the Bill—a point alluded to by my noble and learned friend Lady Butler-Sloss—or whether it should be purely discretionary. As the noble Baroness, Lady Kennedy of Cradley, pointed out, this is actually a discretionary amendment, because it allows for regulation and says, as the right reverend Prelate pointed out, “may” not “must”. It will be there for the Secretary of State to use. Therefore it is not prescriptive in any great sense.

The noble Lord has told us that we should wait for a consultation, but I cannot think of an organisation—and I cited many in my opening remarks—that we would

consult about this proposal that has not already come out in favour of a central repository which should be available to prevent people from having to trawl across the internet to find individual companies. How on earth is anybody going to do that? Who will know who makes the threshold required in this legislation and who does not?

The noble Baroness, Lady Kennedy, and my noble friend Lady Young said that we should learn from experience. The Californian experience has been cited here. If only they had their time again. It is not about the inability of people in Silicon Valley, as the Minister said, to construct a website. It is quite the reverse. It was the failure of legislators to place a requirement in their legislation that such a central website should be provided, so there would be a repository where everyone meeting the threshold would have to place an account of what they were doing to combat modern-day slavery and human trafficking. There are moments when Parliament needs to help Ministers out and this is one of them. I therefore beg to test the opinion of the House.

4.53 pm

Division on Amendment 3

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would look again at this before Third Reading, and I have done so; the government amendment reflects our revised thoughts on the issue. It commits the Government to publishing a consultation paper on the role and responsibilities of the GLA within one year of the Bill being passed. This amendment achieves several important things, including a full public consultation on the role of the GLA, which will be placed in the context of the wider landscape of organisations fighting worker mistreatment. It provides for an evidence-based approach to further improving the role of the GLA in tackling abuse of workers. In addition, this new clause places this commitment to a consultation in legislation, meaning that a future Government must live up to the commitments that have been made during the passage of this Bill and ensure there is an urgent focus on the work of the GLA at the start of the next Parliament.

I believe that a clause on the work of the GLA in this Bill reflects the concerns expressed through pre-legislative scrutiny, debates in another place and in this House. All through the passage of this Bill, there has been a common view that we need to focus on getting the role of the GLA right, and this amendment reflects that clearly in the Bill. Through this full public consultation, we will be able to take proper account of the activity of other organisations devoted to tackling serious crime and protecting workers and make sure that, in whatever we do, we avoid creating duplication and overlaps between agencies, thus avoiding wasting time and money which could be better used than in allowing the perpetrators of mistreatment of workers potentially to escape scrutiny. Preparatory work on the consultation document will start immediately so that it can be published as soon as possible in the next Parliament.

I know that some noble Lords have supported the idea of an enabling provision to allow extension of the GLA remit by secondary legislation. Our assessment is that would not achieve its main purpose of avoiding the need for further primary legislation should a decision be taken to extend the GLA remit. We have not, therefore, focused the government amendment in this area. Any significant change to the GLA would be likely to require both reform of the Gangmasters Licensing Act 2004 and substantive changes to wider primary legislation related to how the labour market is regulated, such as the Employment Agencies Act 1973. A focus on how the remit of the GLA is set out in legislation in isolation fails to consider the need to make sure that our legislation provide for a coherent enforcement landscape that can be used by the police, the National Crime Agency, HMRC, the Employment Agency Standards Inspectorate and others.

I assure the House that the Government welcome and share the commitment expressed in this House to considering how best the GLA can tackle and punish those that abuse, coerce and mistreat their workers. Our proposal for a full and speedy public consultation reflects that commitment.

I add one other thing, on the subject of consultation. I know that we have had many consultations, but that in itself is part of the strategy. The more that we engage with organisations and individuals about different aspects of how this Bill is going to work in practice,

5.08 pm

Amendment 4

Moved by **Lord Bates**

4: Before Clause 55, insert the following new Clause—

“Gangmasters Licensing Authority

The Secretary of State must—

- (a) before the end of the period of 12 months beginning with the day on which this Act is passed, publish a paper on the role of the Gangmasters Licensing Authority, and
- (b) consult such representative bodies and other persons as the Secretary of State considers appropriate about the matters dealt with by that paper.”

Lord Bates: My Lords, this amendment inserts a new clause before Clause 55. I thank noble Lords for the excellent debates that we have had on the Gangmasters Licensing Authority during the passage of the Bill, as well as the important discussions that we had outside the Chamber ahead of Report. I welcome the support expressed in this House for the vital work undertaken by the GLA—the Gangmasters Licensing Authority, that is. It is obvious that there is a shared interest right across the House in increasing the GLA’s effectiveness and indeed that of all the agencies engaged in the fight against worker mistreatment.

On Report last week, I welcomed the spirit—no pun intended—of the proposal from the right reverend Prelate the Bishop of Derby, which was supported by the noble Lord, Lord Alton of Liverpool, and the noble Baroness, Lady Kennedy of Cradley. I highlight that my concerns about it were of a technical nature; as in the previous group, there is no difference over the principle that we want to see in the Bill. I said that I

[LORD BATES]

the more awareness there will be of the problem and of the new, robust legislative landscape that is there to tackle this abuse. I hope that noble Lords will support this amendment to ensure a comprehensive consultation. Again, I particularly thank the right reverend Prelate the Bishop of Derby for his work in this important area.

The Lord Bishop of Derby: My Lords, I thank the Minister. This is another excellent example of listening, learning and working together and taking seriously what was said at Report. On Monday, I was privileged to be at the GLA national conference, which was in Derby, where the Minister, Karen Bradley, who I see is present, was the keynote speaker. I was privileged to speak, along with the new independent commissioner designate. The GLA is alive and well and thinking creatively, but it will be very important for it to use its expertise in a targeted way and negotiate how that expertise is employed alongside other inspectorates. I welcome this proposal.

At the event on Monday, there was the launch of an academy by Derby University in partnership with the GLA to help businesses to learn good practice at a professional benchmarked standard to enable them to comply with the spirit and direction of the Bill and for there to be proper professional training of those employed in businesses to administer supply chains and employment.

The GLA is fulfilling all the expectations that it raised with the Select Committee and Members of this House. It is very important that we undertake this work. I am grateful that the amendment contains the word “must” because it is important to do this scoping out and I thank the Minister for tabling it.

5.15 pm

The Earl of Sandwich: My Lords, I have no problem with the amendment but have picked up a concern that, although it is in line with much that has been done already, it possibly raises the whole question of the GLA. A future Government might come in and say, “We have had this consultation and perhaps the GLA is not the right way forward”. I do not know whether the Minister has heard that comment before but it would be helpful if he could give some reassurance on the record that this could not be a consequence of the consultation and this amendment.

Lord Rosser: The comment that I wanted to make was in line with that made by the noble Earl, Lord Sandwich. I appreciate that the Minister can talk only about the intentions of this Government and not those of a future Government. The amendment refers to publishing,

“a paper on the role of the Gangmasters Licensing Authority”.

Will the Minister assure us that the Government are not looking to extend the role of the GLA into other new and very different areas such as crime control or anything to do with border security, but that they will consider whether to extend its existing remit and resources to enable it to continue to fulfil the very successful role that it plays in labour inspection, enforcement and standards? There must surely be a need to concentrate

on its core functions and perhaps extend the area in which it carries them out given that it is highly successful at achieving those core functions which are crucial in the fight against modern slavery.

Lord Bates: My Lords, I am grateful to the right reverend Prelate for welcoming this amendment. I again thank him for his work in this area. In answer to the point made by the noble Earl, Lord Sandwich, the consultation will look across all aspects of the GLA's work and will consider how it can make an effective contribution to tackling worker exploitation through asking questions about how we can improve the way that it gathers and shares intelligence with other agencies and the way that it interacts with other agencies. The consultation will also examine possible changes to its enforcement activity and powers as well as to its licensing functions. Given that that is the intent, I certainly think that the scenarios outlined by the noble Lord, Lord Rosser, would not arise. We are talking about the mistreatment and exploitation of workers. The GLA performs excellently in its present role and we are seeking to ascertain whether, given this new piece of legislation, it can play a part in supporting the work of tackling exploitation. I hope that I have reassured the noble Earl.

Amendment 4 agreed.

Clause 57: Regulations

Amendment 5

Moved by Lord Bates

5: Clause 57, page 44, line 33, at end insert—

“() regulations under section 43(9) which contain the provision mentioned in section 43(10) (modification of section 43 in its application to public authority added to Schedule 3);”

Amendment 5 agreed.

Amendment 6 not moved.

Amendments 7 and 8

Moved by Lord Bates

7: Clause 57, page 45, line 7, at end insert “, or

(ii) the provision mentioned in section 43(10) (modification of section 43 in its application to public authority added to Schedule 3);”

8: Clause 57, page 45, line 22, at end insert “, or

(b) the provision mentioned in section 43(10) (modification of section 43 in its application to public authority added to Schedule 3).”

Amendments 7 and 8 agreed.

Motion

Moved by Lord Bates

That the Bill do now pass.

Lord Bates: My Lords, the new advice from the Procedure Committee is that it is at this stage, in moving that the Bill do now pass, that we make some traditional remarks marking the end of this stage. I want to take that opportunity.

To start naming particular individuals is perhaps invidious, since so many have engaged in this process.

This has been a genuine cross-party effort. All sides of the House, including the Cross Benches, have played an incredibly important role. That also includes the Bishops' Benches—they have played a very important role in shaping this legislation.

In all the legislation I have ever been involved in, this has perhaps been one of the most significant. Procedurally it has been one of the best for Parliament. I am delighted to see the Minister for Modern Slavery at the Bar of the House. It is appropriate that she is there. When the Bill was published it went through pre-legislative scrutiny. It was then republished. It was taken through a substantive series of Committee stages in the other place, where amendments were made. It then came to your Lordships' House where it has been engaged with again. The amendment that I just passed, Amendment 8, was the 100th government amendment that we have made to the Bill in the House of Lords. That is a tribute not only to the deep passion that we all share on this issue, but to the thoroughness with which we have engaged.

From my point of view, I thank in particular my noble friend Lady Garden for her support through this process. I thank members of the Bill team, who have done such a tremendous job. We have put them through an incredible pace. The number of letters, bilateral meetings, interested Peers' meetings and telephone calls that we have had has put a tremendous strain on them. I am very conscious of that, but they have performed their role perfectly in support of our discussions in your Lordships' House.

I take great pride in this Bill. It was more than 200 years ago, as the noble Lord, Lord Alton, often refers to, that legislation abolishing slavery was passed by this House. It was this country that took a lead in the world to produce legislation to bring about that effect. What we have done in our work is of a similar magnitude and similarly groundbreaking. It needs to send a message to the victims that we are here and will provide them with support, and to those who are perpetrating this evil crime that there are powers, capabilities and institutions that are now on their case in tackling their inhumanity to other human beings. With that, I beg to move.

Lord Rosser: I thank the Minister for his very kind comments. I, too, add my appreciation for the work that both he and the noble Baroness, Lady Garden, have done. I express my thanks to the members of the Bill team. Whether with 100 government amendments they ended up in a state of despair, I do not know, but if they did they never showed it and we are extremely grateful.

I also express appreciation from these Benches to all noble Lords who have taken part in our discussions, whether from a political party, the Cross Benches or the Bishops' Bench. We have had numerous meetings which have all been extremely helpful. They have certainly all been extremely good-natured and conducted on all sides with a view to trying to resolve any differences of view and to come up with solutions that have been acceptable to us all. I also thank those organisations and individuals who have provided advice and briefings. I am sure we have found them all very useful and

helpful. Whether or not we have always taken the road that the advice suggested is another matter, but we appreciated receiving it.

This Bill has been interesting because at heart it has not been a party-political issue. We have all been trying to achieve the same objective. We may have had slightly different views as to how that objective should be achieved, but nevertheless this Bill has avoided some of the rancour that can go with highly party-political issues. As the Minister has said, at the end of the day we have achieved real progress on behalf of the victims of modern slavery and I am sure this Bill and its terms will be much appreciated by all those concerned for what it will achieve.

The Minister said there had been 100 government amendments. They were obviously put down in part as a result of the patience, good nature and willingness to listen of the noble Lord, Lord Bates, and the noble Baroness, Lady Garden, which has been widely commented on in this House and widely appreciated. Of course, in so doing, the Minister has denied us the excitement and thrill of a number of votes, but in view of the outcome of the last one, perhaps that is just as well.

Baroness Hamwee: My Lords, from the Liberal Democrat Benches I also thank all those who have already been mentioned. It is only so as not to be tedious that I will not go through the list again but my thanks are sincere.

This has been such a good example of how Parliament can work well across parties, with people of no parties and with organisations outside this House, as the noble Lord said. I have been particularly struck, which I am sure is in no small part thanks to the efforts of both Ministers present, that even at this last stage, with the last of the substantive amendments on the Gangmasters Licensing Authority, the Minister came forward with an amendment which he did not need to make. I do not think there would have been complaints. We would have taken the good faith of what he had said about the work that the Government were going to be doing on this. I know that he will agree that this is the end of the beginning rather than anything further, including at a personal level. I do not know whether the Bill team has counted up for him the number of commitments to extra meetings that he has made following the passing of what will soon be an Act but I know that we will all want to continue to be involved in making sure that the Bill, as implemented, fulfils its promises.

The Lord Bishop of Derby: My Lords, I want to very briefly say from these Benches what a privilege it has been to participate. My colleague, the most reverend Primate the Archbishop of Canterbury, had to get special permission for me to sit on the Select Committee. It has been a wonderful opportunity for the church to contribute and, through me, for the voluntary sector to be involved both with the crafting of the legislation and with working further afield on grass-roots responses and the wider cultural and learning changes that need to happen in our society. I also want to say a final "thank you" to the Minister whose leadership of this whole process has been exemplary, as other colleagues have said.

Bill passed and returned to the Commons with amendments.

Deregulation Bill

Third Reading

5.30 pm

Lord Wallace of Saltaire (LD): My Lords, I have it in command from Her Majesty the Queen and His Royal Highness the Prince of Wales to acquaint the House that they, having been informed of the purport of the Deregulation Bill, have consented to place their interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Clause 1: Health and safety at work: general duty of self-employed persons

Amendment 1

Moved by Lord Wallace of Saltaire

1: Clause 1, page 1, line 10, at end insert—

“() After subsection (2) insert—

“(2A) A description of undertaking included in regulations under subsection (2) may be framed by reference to—

- (a) the type of activities carried out by the undertaking, where those activities are carried out or any other feature of the undertaking;
- (b) whether persons who may be affected by the conduct of the undertaking, other than the self-employed person (or his employees), may thereby be exposed to risks to their health or safety.”

Lord Wallace of Saltaire: My Lords, Section 3(2) of the Health and Safety at Work etc. Act 1974 imposes a general duty on all self-employed persons to protect themselves and others from risks to their health and safety, regardless of the type of activity they are undertaking. Clause 1 limits the scope of Section 3(2) so that only those self-employed people who conduct an,

“undertaking of a prescribed description”,

will continue to have a duty under this provision.

A public consultation was conducted by the Health and Safety Executive during July and August 2014. A common concern was that regulations which prescribed only self-employed persons who conducted specified high-risk activities would not be fit for purpose. One of the key concerns expressed by respondents to the consultation was that this would lead to some self-employed persons who pose a risk to the health and safety of others falling exempt from the law. Following the commitment I provided to the House on Report, the Government have now given careful further consideration to the consultation responses and Amendment 1 addresses these concerns.

The amendment sets out the ways in which undertakings may be described in regulations made under Section 3(2) of the 1974 Act to retain duties on self-employed persons. New subsection (2A)(a) covers descriptions based on the type of activities carried out by the undertaking. These descriptions could include a reference to the economic activities that the undertaking engages in, work activities involving a specific hazard, work activities conducted in a specific capacity, or a combination of these things. New subsection (2A)(b)

ensures that the regulations could also include a general description covering any undertaking the conduct of which may expose others to risks to their health and safety.

This amendment will therefore enable the Secretary of State to make regulations which not only retain Section 3(2) duties on all self-employed persons who conduct specified high-risk work activities but also retain duties on those self-employed persons who may expose others to risks to their health and safety. This, it is considered, more closely aligns with Professor Ragnar Löfstedt’s recommendation in respect of this provision. Regulations made under this clause will continue to be subject to the affirmative procedure. They will therefore be scrutinised by Parliament at the time of laying to ensure they are fit for purpose before the regulations are brought into force.

The Government acknowledge that assistance will need to be provided to the self-employed to assist with their understanding of this legislative amendment and to limit the possibility of incorrectly assessing whether their work activities may expose other persons to risks to their health and safety. Further to aid this amendment, the HSE will therefore produce guidance targeted at self-employed persons and others to address these issues. It will also signpost them to existing guidance which explains in practical terms what self-employed persons need to do to comply with the relevant law.

Amendment 2 seeks to make it mandatory for the regulations to prescribe all self-employed persons who may pose a risk to the health and safety of others, thereby ensuring that they do not fall exempt from the law. I can provide the noble Lord, Lord McKenzie, with the assurance now that the Government intend to produce a set of regulations that will retain a duty on all self-employed persons who may pose a risk to the health and safety of others under Section 3(2) of the Act. I understand what the noble Lord wants to achieve with his amendment. However, in the light of the assurances I have now provided, and given the safeguards in place for the regulations to be scrutinised further by Parliament before they are brought into force, I hope the noble Lord will not seek to change what the Government have brought forward. I think the differences between us have narrowed considerably although I realise that some very small differences remain about the assessment of potential risk.

Amendment 3 seeks to impose various conditions on the making of regulations before undertakings can be prescribed for the purposes of retaining duties on the self-employed under Section 3(2) of the Health and Safety at Work etc. Act 1974. This amendment requires an independent review to be conducted and considered by both Houses before the regulations can be brought into force.

I hope I can provide some assurances also to demonstrate that this amendment is not necessary. In Committee, the Government amended Clause 1 so that regulations made under the power it creates are subject to the affirmative resolution procedure before they come into force. This provides Parliament with an adequate opportunity to scrutinise and debate the regulations to ensure that they are fit for purpose. The conditions that the noble Lord seeks to impose on

the regulations can already be considered by the Houses as part of the affirmative resolution procedure if, indeed, Parliament considers these factors to be relevant. Additionally, the proposed prescribing regulations will contain a commitment for their review and for a report to be published after five years of making these regulations. The report will seek to assess the extent to which the objectives intended to be achieved by the proposed policy have been met.

Given the safeguards already in place, and the consultations undertaken by the HSE, the Government do not consider that a further independent review of the regulations would be of any benefit. Furthermore, the Government have now changed the policy to ensure that all self-employed people who expose others to risks to their health or safety will remain subject to the law. This, I think, is also what the noble Lord seeks to achieve. We have considerably narrowed the differences in the course of our consultations. I thank the noble Lord and other opposition Peers for the conversations we have had with officials in the intervals between the various stages of this Bill. I hope we have provided sufficient assurance. I beg to move that Amendment 1 is made and urge the noble Lord not to press Amendments 2 and 3.

Amendment 2 (to Amendment 1)

Moved by Lord McKenzie of Luton

2: Clause 1, leave out lines 8 to 11 and insert—

“(b) must be framed so as to include all those whose work activities may pose any risk to the health and safety of any person other than the self-employed persons conducting them.”

Lord McKenzie of Luton (Lab): My Lords, I will speak also to Amendment 3. I thank the Minister for reverting on this matter at Third Reading, as he promised to do, and for providing some important draft regulations. The issue with which we have grappled throughout this Bill is how Professor Löfstedt’s recommendations might be safely implemented—if indeed they can be—and in particular how it would be possible to deliver the recommendations that those self-employed who pose no potential risk of harm to others should be exempt from the general duties of the Health and Safety at Work etc. Act 1974 without creating unintended consequences.

As we have asserted before, maintaining the status quo for the self-employed is the preferred approach given the minimal requirements that would fall on them in these circumstances and the risk of confusion that could follow any change. However, we accept that this is not where the Government are—hence another attempt to implement the recommendation is necessary. Certainly, the first two attempts to implement a Löfstedt approach fell short. The most recent did not have the support of the professor himself and received substantial criticism when consulted on, not least from the CBI and the EEF, and it is understood that the HSE advised that the last approach should be abandoned. The latest attempt is reflected in the government amendment and in the draft regulations, which I think were circulated on Monday.

As we have heard, this amendment provides a framework for determining who is conducting and undertaking a very prescribed description and, hence, is subject to the general duty. As we have heard, it can be determined or framed by reference to types and locations of activities or any other feature, and, crucially, by whether persons who may be affected by the conduct of the undertaking may be exposed to risk to their health and safety—a very important change.

Although our preference for any exemption from the general duty is that it should be based on everyone being in, subject to exclusions which take people out, rather than the reverse, we see merit in this government amendment. We are comforted by proposed new subsection (2A)(b), which appears to be a substantial change in the Government’s position, as I think the Minister confirmed. It brings matters back to a Löfstedt formulation and therefore we are grateful to the Minister for his efforts in bringing this about, doubtless with the steadying hand of the HSE. It raises questions of how it is to be put into practice and doubtless takes us back to issues around risk assessments, but I was pleased to hear what the Minister said about specific guidance being developed in this regard, as well as use of the existing guidance.

Although comforted, I am bound to say that we are not comforted enough. Our Amendment 2 would simply ensure that, rather than just setting out some of the potential criteria by which undertakings of a prescribed description may be determined—that is, the circumstances which bring a self-employed person under the duties of the 1974 Act—it is mandatory. So regulations determining the self-employed who retain a general duty must always include those who may pose a risk to the health and safety of another person. Indeed, why on earth should that not be the case?

Certainly that approach is what has been provided for in the draft regulations that we have seen. But they are, frankly, only that—draft—and presumably there is no prospect of them being finalised before the end of this Parliament. The Minister may wish to comment on their intended progress. What assurance do we have that the actual regulations will replicate the circulated draft? I understand exactly what the Minister said—that if he were in a position to determine that, that would be the case; it would be the basis on which the Government took them forward. However, we know where we are in the electoral cycle and, come May, who knows who will be in a position to take this forward and on what basis? Is it not the case that the government of the day could ignore new subsection (2A)(b) in framing any regulations, undoing the good work that the Minister has achieved and reverting to a prescriptive list which bears all the flaws of the earlier version? Changing primary legislation, which could always be done, would be much more difficult.

Incidentally, in determining who is exposed to harm, the Government have discounted the employees of a self-employed person. Accepting that Section 2 of the Health and Safety at Work etc. Act would in any event impose a duty on the self-employed in respect of their employees, can the Minister tell us why that is so?

Our Amendment 3 was drafted before we had sight of the government amendment and it calls for a review of any proposed regulations to see that they are fit for

[LORD MCKENZIE OF LUTON]
purpose. This still has relevance, although we see that the draft regulations—the Minister referred to this—provide for a review of any regulations within a five-year period. Such a review would clearly be welcome.

On the face of it, the Government's position represents a significant and welcome change. However, unless we think about locking it down more tightly in primary legislation, it may yet be wasted. I beg to move.

5.45 pm

Lord Wallace of Saltaire: My Lords, I thank the noble Lord for his constructive comments, and I recognise that the timing creates some difficulties. I have consulted on whether draft regulations can be finalised, approved and laid before the general election, but I have to say that with the best will in the world that will not, at this stage, be possible. I cannot give the noble Lord a guarantee on the structure, nature and composition of the next Government—I am not sure that any of us can at present. That, of course, has to remain a matter of good will and of the commitment of those who have been involved from all sides in these consultations.

The duties and the question of the employees of the self-employed are covered by the general duty that the self-employed have to consider the interests of others and the risks involved. That seems to me to be fully covered here. We have moved as far as we can and the draft guidance was intended to provide an indication of where this coalition Government would be moving and where we would trust any successor Government to continue in assessing this very delicate balance between where Professor Löfstedt started, which was with the sense that we should try,

“to exempt from health and safety law those self employed people whose work activities pose no potential risk of harm to others”,

and, as he also said in his original review, to,

“help reduce the perception that health and safety law is inappropriately applied”.

That is what we on both sides are attempting to do. I felt that the Government had now moved sufficiently far to assure the Opposition that we were very much pursuing this role and that our proposals would bring Britain into line with other European countries and remove health and safety burdens from the self-employed in low-risk occupations. I hope that that does provide sufficient assurance, but I will see how far we have been able to do so.

Lord McKenzie of Luton: My Lords, I am grateful to the Minister for his response, and I entirely accept his assurance about what he sees as the way forward in circumstances where he and his colleagues were in a position to determine that. It is a great pity that the Government have come a significant way on this but we are just a smidgeon away from locking it down and making it mandatory. I really do not see the problem with doing that. If the Government are happy to provide for that in the draft regulations and happy to take those factors into account as part of their amendment, simply always making it mandatory to feature that provision in regulations seems to me to be quite a small additional step and one that could make a real difference. It is a pity that having come so far the Government cannot just close that gap.

Incidentally, in terms of the employees of self-employed people, I understand that Section 2 of the 1974 Act creates a general duty on all employers, whether they are employees, self-employed, or whatever their status is, so I am not quite sure why they are being excluded here when these arrangements are considered. Perhaps we might reflect on that. This is difficult, because I would like to test the opinion of the House, but I think that the Minister has done his utmost to provide reassurance on the record. That is where we are, and it is probably the best way to leave it today. I beg leave to withdraw the amendment.

Amendment 2, as an amendment to Amendment 1, withdrawn.

Amendment 1 agreed.

Amendment 3 not moved.

Amendment 4

Moved by Lord Ahmad of Wimbledon

4: After Clause 43, insert the following new Clause—

“Short-term use of London accommodation: relaxation of restrictions

(1) The Greater London Council (General Powers) Act 1973 is amended as follows.

(2) In section 25 (provision of temporary sleeping accommodation to constitute material change of use), after subsection (1) insert—
“(1A) Subsection (1) is subject to section 25A.”

(3) After section 25 insert—

“25A Exception to section 25

(1) Despite section 25(1), the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if two conditions are met.

(2) The first is that the sum of—

(a) the number of nights of use as temporary sleeping accommodation, and

(b) the number of nights (if any) of each previous use of the premises as temporary sleeping accommodation in the same calendar year,

does not exceed ninety.

(3) The second is that, in respect of each night which falls to be counted under subsection (2)(a)—

(a) the person who provided the sleeping accommodation for the night was liable to pay council tax under Part 1 of the Local Government Finance Act 1992 in respect of the premises, or

(b) where more than one person provided the sleeping accommodation for the night, at least one of those persons was liable to pay council tax under Part 1 of that Act in respect of the premises.

(4) For the purposes of subsection (2)(b), it does not matter whether any previous use was by the same person.”

(4) After section 25A (inserted by subsection (3) above) insert—
“25B Further provision about section 25A

(1) The local planning authority or the Secretary of State may direct that section 25A is not to apply—

(a) to particular residential premises specified in the direction;

(b) to residential premises situated in a particular area specified in the direction.

(2) A direction under subsection (1) may be given only if the local planning authority or (as the case may be) the Secretary of State considers that it is necessary to protect the amenity of the locality.

(3) The local planning authority may give a direction under subsection (1) only with the consent of the Secretary of State.

(4) A direction under subsection (1) may be revoked by the person who gave it, whether or not an application is made for the revocation.

(5) The Secretary of State may—

(a) delegate the functions of the Secretary of State under subsection (1) or (4) to the local planning authority;

(b) direct that a local planning authority may give directions under this section without the consent of the Secretary of State.

(6) The Secretary of State may revoke a delegation under subsection (5)(a) or a direction under subsection (5)(b).

(7) The Secretary of State may by regulations made by statutory instrument make provision—

(a) as to the procedure which must be followed in connection with the giving of a direction under subsection (1) or in connection with the revocation of such a direction under subsection (4);

(b) as to the information which must be provided where the local planning authority seeks the consent of the Secretary of State to the giving of a direction under subsection (1).

(8) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section, “local planning authority” has the same meaning as in the Town and Country Planning Act 1990 (see section 336(1) of that Act).”

Lord Ahmad of Wimbledon (Con): My Lords, following the publication of the Government’s policy paper on short-term letting in London on 9 February, the Government have laid Amendments 4 and 17 to 19 to include provision for the policy in the Bill.

The Government’s policy paper has taken into account the representations that we received following the discussion document published last year on property conditions in the private rented sector. It has also taken into account our discussions with London’s local authorities and the industry and all the important issues that noble Lords have raised on this clause in previous debates during the passage of the Bill. They have been clear that any relaxation of legislation governing short-term letting in London should be available only to residents, so that they can make their property available when they are away for a limited duration. It will not allow non-residents to use their property for short-term letting on an ongoing or year-round basis. As set out in our policy paper, the Government share this view, and we have put forward these amendments to update the existing legislation and to ensure that we provide an appropriate level of freedom for residents, alongside important safeguards to prevent abuse of these reforms.

The Government have been consistently clear that their aim is to reform outdated legislation from the 1970s that requires Londoners to apply for planning permission in order to be able to let their residential property on a short-term basis. This will enable London residents to benefit from letting out either a spare room or, indeed, their whole house without unnecessary red tape, in the same way as other residents do in the rest of the country. We have also been clear throughout the passage of the Bill that this policy is aimed at helping residents to let their homes while they are away, not at providing new opportunities on an ongoing basis for commercial letting.

Section 25 of the Greater London Council (General Powers) Act 1973 provides that the use of residential premises for temporary sleeping accommodation for

less than 90 consecutive nights is a change of use for which planning permission is required. London’s residents face a possible fine of up to £20,000 for each offence of failing to secure planning permission.

The world that we live in today is very different from what it was in the 1970s. The internet has created entirely new ways to do business. It has made it much easier for people to rent out their property, allowing residents to supplement their incomes and offer new experiences for consumers. Last summer, nearly 5 million overseas visitors came to our capital city. Some of those visitors, as well as UK residents, want to experience London as a real local. This means either staying with Londoners or staying in their homes while the Londoners are away on holiday.

Currently thousands of London properties and rooms are advertised on websites for use as short-term accommodation. However, each is potentially in breach of Section 25 as it stands. The current legislation is poorly enforced, which often leads to confusion and uncertainty for householders as to whether their local authority will take planning enforcement action against them for unauthorised short-term letting. The Government’s reforms will provide clarity and give London’s residents confidence that they are able to let out their property on a short-term basis within the law, but without the disproportionate bureaucracy of applying for planning permission.

The Government have tabled these amendments to the Deregulation Bill in order to allow residential property to be let out on a short-term basis without planning permission while providing a number of important safeguards. Indeed, these safeguards reflect some of the concerns that noble Lords have expressed. In order to ensure that these reforms will help residents but not create opportunities for the short-term letting of properties on a permanent basis, these amendments propose to allow short-term letting without planning permission up to a limit of 90 nights in total per calendar year, as well as requiring that the people providing their property for use as temporary sleeping accommodation are liable for council tax. Provision has also been made to empower local authorities to request that the Secretary of State agree to targeted localised exemptions from this new flexibility, either for particular properties or properties in particular areas, but there needs to be a strong amenity case to do so. This will ensure that the provision is used only where clearly justified.

The Government want to enable London’s residents to participate in the sharing economy and enjoy the same freedom and flexibility as others do across the country to temporarily let out their homes without the disproportionate burden of requiring planning permission. These amendments will deliver an appropriate level of freedom and flexibility for Londoners without creating new opportunities for short-term letting on a permanent or commercial basis.

I will now address the substantial issues in Amendments 5 to 16. Amendment 7 seeks to amend Amendment 4 by reducing the number of nights that residents can let their property on a short-term basis without planning permission from the proposed 90 nights in total per calendar year to a maximum of 60, with the number to be specified in regulations. The Government

[LORD AHMAD OF WIMBLEDON]

want to deregulate the current requirement to apply for planning permission, and to do so in a way that gives residents real freedom and flexibility. We believe that a limit of 90 nights per calendar year offers an appropriate level of flexibility, while being clear that the 90-night limit means that we are not providing for short-term letting on a year-round basis. The Government believe that a limit of 60 nights, and the ability to prescribe a lower limit in regulation, is unduly restrictive on the way people use their property.

The Government are also keen to enshrine in the Bill the number of nights that property can be let on a short-term basis in order to provide certainty that is currently absent under existing Section 25. As I said earlier, the current legislation is poorly enforced, which often leads to confusion and uncertainty for householders as to whether their local authority will take planning enforcement action against them for unauthorised short-term letting. The proposed ability to vary the number of nights in regulation will add to this feeling of uncertainty.

Amendment 8 seeks to create an additional condition, which is that a property can be let on a short-term basis without planning permission provided that the premises are the principal residence in London of the owner. The Government believe that the limit of 90 nights per year and the council tax liability are sufficient safeguards. We do not want to legislate unnecessarily for how the new rights should apply to individuals' use of their property. We want the legislation to remain light-touch, but we also want it to send a strong signal that in order to let your property on a short-term basis legally you must remain within the 90-night limit or risk a local authority taking enforcement action against an unauthorised change of use.

The Government's amendments, alongside Clause 44, have already provided for the ability to prescribe additional instances where residential property can be used as temporary sleeping accommodation in certain other circumstances that may be specified. Under our amendments and Clause 44, it would therefore be possible to add additional safeguarding measures in future, should it prove necessary.

Amendment 9 seeks to require the provider of temporary sleeping accommodation to notify the local authority in advance of every occasion that they let their property on a short-term basis. One of the major advantages of the internet is the ability to make transactions quickly and flexibly, and we want our reforms to facilitate this. A requirement for advance notice prior to every short-term stay, on a form to be prescribed in secondary legislation, would create a bureaucratic burden on the accommodation provider and potentially limit the ability of hosts to offer accommodation to customers seeking to book at short notice. Let me be clear: the Government are seeking to deregulate the current requirement to obtain planning permission for short-term letting in London. We do not believe that people wishing to let their homes on a short-term basis should be burdened by new red tape, to be set out in future secondary legislation.

Amendment 12 seeks to remove the requirement for the local planning authority to seek the consent of the Secretary of State in order to direct that the new

flexibility does not apply to particular residential premises or premises in particular areas. The Government want the Secretary of State and the local planning authority to be able to grant exemptions, but only in exceptional circumstances and where, as I said earlier, a strong case has been made for the protection of the amenity of the locality by the local authority. Otherwise, we want to be clear that our aim is to provide the same rights for all Londoners in all local authority areas.

6 pm

This amendment would create a range of different regulatory approaches across different London local authorities, potentially resulting in unjustifiable differences between adjacent local authority areas. Residents would find that their near neighbours have either greater or lesser freedoms to let their properties without any apparent justification. In this context, with Amendment 12 seeking to remove the requirement to seek the Secretary of State's consent, Amendment 11 would change the basis on which an exemption to the new flexibility could be made by a local authority, from where it is,

"necessary to protect the amenity of the locality",

to where it is "necessary or desirable" to do so. The Government believe that this amendment does not help to meet our policy aims, as it would create a lower bar for justifying an exemption, where we believe that this should be done only in exceptional circumstances.

Amendment 15 would provide for the ability of the Secretary of State to make regulations, which mean that the new flexibility does not apply to any premises that have been subject to a specified number of successful enforcement actions against a statutory nuisance. The Government believe that this amendment is unnecessary, as our amendments have already provided the ability for the Secretary of State to direct that the new flexibility should not apply to specified premises.

The Government want to enable London residents to enjoy the same rights as the rest of the country to temporarily let their homes. These amendments will deliver an appropriate level of freedom and flexibility for Londoners, within an appropriate set of safeguards, and will not create new opportunities for short-term letting on a permanent or commercial basis. We all recognise that short-term letting is already taking place across London, but the current legislation has led to confusion and uncertainty for potential hosts. The Government's amendments and Clause 44 will provide clarity and give London residents the confidence that they are able to let their properties on a short-term basis within the law, but without the disproportionate bureaucracy of applying for planning permission. In this amendment, I draw your Lordships' House to my entry in the register of interests as a landlord. I beg to move Amendment 4 and I urge noble Lords to withdraw their amendment.

Amendment 5 (to Amendment 4)

Moved by Lord McKenzie of Luton

5*: After Clause 43, line 7, leave out "section 25A" and insert "sections 25A and 25B"

Lord McKenzie of Luton: My Lords, in moving this amendment, I will also speak to our other amendments in this group. In doing so, I, too, draw attention to my

interest in the register. We consider that this is an integrated group of amendments that stand together, should we decide to test the view of the House. I trust that that is agreed.

The issue of short-term lets has generated considerable controversy since it has been proposed that there should be some relaxation of the London provisions, but it has also focused attention on what is now happening in the market and why the status quo cannot be sustained. Currently, the letting of residential accommodation for temporary sleeping accommodation in London for a period of less than 90 consecutive nights constitutes a change of use for which planning permission is required. Notwithstanding that there is the possibility of a fine of up to £20,000 for failure to secure permission, we know that short-term letting is extensively carried on without permission being available.

We have covered in earlier debates the problems that can arise and the issue is helpfully dealt with also by the briefing we have received from London Councils for this debate. It concerns the potential loss of residential accommodation to the lucrative short-let market, increased problems with noise and anti-social behaviour, loss of community identity, increased crime and fire safety risks, and significant challenges on continual enforcement. We know that other cities around the world are experiencing similar problems. There is clearly a market for this activity and business opportunities have been created, particularly via the internet, which are different, as the noble Lord said, from the 1970s. According to the Government's own figures, there are currently thousands of London properties and rooms advertised as used for short-term lets, each potentially in breach of the law. That is an untenable situation.

The amendments that I am speaking to have the support of the noble Baronesses, Lady Hanham and Lady Gardner of Parks, and the noble Lord, Lord Tope, who have each added their names. Indeed, we have worked together across our party divides to come up with a package of measures that, building on the government amendments, would enable home owners who wish to let their homes on a short-term basis to do so unless there is detriment to the amenity of the locality and to do so within a system where there is proper notification to local authorities and where enforcement is enabled. Like the Government, we do not see this as providing new opportunities for large-scale commercial lettings. These amendments, too, are about providing safeguards for the local community.

Our amendments cover five issues. First, there must be provision in regulations for those letting properties on a short-term basis to have an obligation to notify the local authority. Our amendment is not prescriptive as to form and content and it need not be overly bureaucratic. The Minister rather set his face against that in introducing his contribution, but there is no reason why this could not be dealt with very straightforwardly via some web-based approach. It is not prescriptive, but it would give an opportunity for the local authority to gain an understanding of the scale of activity in its area. It would also aid local authorities in their enforcement role, which we know is a challenge at the moment, and of course potentially be an encouragement to tax compliance.

Secondly, we consider the number of days in the calendar year that accommodation should be available for short-term letting should be 60 rather than 90 days, as the Minister recognised, with regulations enabling this to be reduced. We consider that to be a more reasonable constraint and protection on local amenity. But even that would allow a four-month back-to-back letting across a year end. The Minister simply asserted that 90 days was more appropriate. I am not sure that that assertion, frankly, carries more weight than one for 60 days.

The concept is that short-term letting should be allowed effectively for someone's home. It appears that the Government are seeking to define that by liability to council tax. We think that that is inadequate. Would not a liability to council tax arise for somebody letting residential property on a commercial basis, for example, between tenancies? Limiting the relaxation to someone's principal residence in London would better target the deregulations.

Fourthly, we welcome the provision that the Government are seeking to make for local authorities to disapply the regulation for certain properties or areas, but oppose this right being subject to the consent of the Secretary of State. Local authorities are better placed to make the judgment about the impact of short-term lettings in their boroughs. Surely, that must be the case. We agree that they should not be able to do this in an arbitrary manner and protection of the amenity of a locality is a fair yardstick. However, we believe that a desirable hurdle rather than one that is necessary is considerably fairer. Indeed, the necessary hurdle could give rise to substantial and fair challenges on the local authority.

Finally, there is the issue of enforcement. In their policy document of February this year, the Government stated that:

"To protect amenity and address concerns over nuisance, the Government proposes that the new flexibility should be able to be withdrawn from particular properties after just one successful enforcement action against a statutory nuisance".

In his contribution, the Minister said that there was provision elsewhere for this to be effective, but I am not sure where it is. The Government were clear in their policy document that that was what they wanted to happen. Our amendment provides that regulation should make such provision but is potentially more flexible than the "one strike and you're out" approach.

These amendments are not designed to undermine the Government's position, but to strengthen the safeguards, but also, in the spirit of localism, to recognise that local authorities and not the Secretary of State are best placed to determine whether the scale of short-term letting is destroying the amenity of their areas. I beg to move.

Baroness Hanham (Con): My Lords, my name is also on this amendment, and I would like to draw attention to the declarations I have made in the past of being a joint president of London Councils and also a former leader and member of the Royal Borough of Kensington and Chelsea, which will be affected by this legislation.

The noble Lord has set out very clearly the amendments that we think are necessary to make this legislation tenable. London has a particular problem. I drew attention on

[BARONESS HANHAM]

Report to a phrase in the policy document which said that London needed to be brought into the 21st century over the renting and letting of property. I said then and I say now that I think that London is already and has been in the 21st century for a very long time. There is enormous pressure on property in London. There is probably more renting now in London than anywhere else. There is a hugely transitory population, so that we now have great areas where we know that people are not resident. The properties are not used; they are investment properties. London has a dichotomy. It is an area where people want to live but now cannot, largely because it is getting so expensive. Where there is investment, the people who have invested in property are not from this country but from abroad. Where there is a lot of very new property on land which perhaps could have been used for local people, it is now largely empty.

The temptation to let is enormous. To make sure that there is no abuse of the proposals which the noble Lord has brought forward, we have tabled these amendments. Before saying more about that, I want to mention some other things that I am concerned about. The Government—of whom I have been a great supporter—are all in favour of devolution, of passing powers to different parts of the country and to different parts of England. We have just done it with Greater Manchester. There is more devolution. London has had devolution through its ability to put forward Private Members' Bills to deal with the issues that affect London. These Private Members' Bills are not put forward in isolation: they have to be put forward with the agreement of all the London boroughs. That process has been deficient, at the very least, in terms of what has happened here. I saw a representative of London Councils here today in Parliament, and as far as I am aware, London Councils has been solidly against this proposal since it was first brought forward. By definition, that includes the London boroughs.

For some reason, the Government have chosen to try to override what London wants. They may not think that London figures very greatly within this category in relation to the rest of the country. One of the rationales for making the change is to enable London to do what other parts of the country do. But London is different. It has very different pressures, as I have tried to suggest.

In these amendments we are trying, first, to query whether people really do go on holiday for 90 days. I think we would all be jolly lucky if we managed to get that amount of time off. That suggests that if people want to let for 90 days they might not be quite as altruistic as they might appear to be at first sight. Is it not reasonable to suggest that people might like to go on holiday for a lesser number of days?

Secondly, the amendments are trying to ensure that somebody will at least know that the letting is likely to take place. We have not specified what that process should be other than that people should notify their local authority that they want and are likely to let their properties on a holiday-let basis. If that does not happen and something goes wrong or difficulties occur in those properties—I think that my noble friend Lady Gardner will go into this in more detail—no one will

know why or how the properties have been let, or to whom they have been let, and the local authority will have no real powers of intervention. I think that that matters. I am all for deregulation but I also think that because of the whole problem of renting in London, a little more grip needs to be kept on this.

6.15 pm

I therefore have two objections. The first is the principle of the Government trying to change London legislation without a great deal of consultation. It happens that my next amendment is on the same basis—that London legislation is being changed and overturned. My second objection is that if the Government wish to do this, they must not deregulate to the extent that nobody knows what is happening—so that nobody has the faintest idea how much more rented property there is and the local authorities, which need to know, have no access to the information they need.

I hope very much—although in reality I am not very hopeful—that the Government will reconsider and accept these amendments. It is notable, of course, that since our last discussions on this subject, the Government have rushed to put at least some of their thoughts on the face of the Bill, where it was all a bit cryptic before. What is there needs amending. It also needs a bit of substance behind it. I therefore support all of these amendments.

Lord Clement-Jones (LD): My Lords, I would like briefly but very strongly to support the amendments which have been so well introduced by the noble Lord, Lord McKenzie, and my noble friend Lady Hanham. I may have been a somewhat sporadic attendee for this particular part of the Deregulation Bill, but it certainly has been visible to the naked eye that the goalposts seem to have been shifted somewhat in this area as we have moved from Second Reading in July to Committee in October, with an enormous gap between Committee and Report. The initial assumption was made, as far as I could see, on Second Reading and right up to Committee that the Government were going to completely deregulate in this area. We then discovered that new regulations will be introduced. Some consultation took place, and the policy paper was published. Then, on Report it was clearly understood that we were going to have a set of regulations, which were continuing to be consulted on, which would make changes to Section 25 of the Greater London Council (General Powers) Act 1973 at a later date. And yet we now find ourselves at Third Reading with a very comprehensive new clause setting out the Government's view. It has been like a slow-slow-quick process and completely the reverse of the usual march that one would expect in these circumstances. I think the provisions contain great dangers, and that is why I very strongly support these amendments.

My noble friend the Minister made great play of the benefits to the tourism industry and I want to speak from the perspective of tourism hospitality. However, I believe that the boot is very much on the other foot. Of course, as we all know, tourism and hospitality businesses are a very important part of local communities in London and of the London economy. It is not that

the tourism and hospitality industries are against new models; indeed, they believe that they are an important way of introducing new ways of delivering to tourists. The most recent newcomer—the Minister used this phraseology—is the sharing economy: the sharing model which offers guests the ability to pay to stay in someone’s residence on a night-by-night basis.

We have seen that many of those who let their properties this way are essentially running businesses, but they do not act as responsible hospitality providers and undertake the necessary precautions to ensure health and safety in the same way as more traditional tourism businesses. They have been described as “pseudo-hotels”. If they are allowed to spring up, they pose a real danger not only for their guests but in respect of noise and nuisance for nearby residents. We need to have safeguards to monitor and limit the use of these residences, ensure the rules are followed and quickly deal with any problems that arise. We have seen problems arise in many other cities around the world, and safeguards have been and are being put in to protect communities from the impact of these short-term lets in places such as Paris, New York and Singapore. We need to manage these genuine risks and ensure that safeguards are in place and are enforceable.

These government amendments effectively make it impossible in practical terms to enforce the limits on short-term lets in London. This has been made clear to the Government not only by noble Lords today but by London Councils, including Westminster City Council, and by all those bodies that will, in the future, have the responsibility of enforcement. They must surely have a pretty good idea of whether these provisions are going to be enforceable by their own officers. Without local registration, there will be no ability to enforce any safeguards around short-term lets. At a minimum, local councils and the Metropolitan Police should have the transparency they need about the use of these London residences to identify them when they are being used for short-term lets and to ensure that safety and security measures are in place to protect communities.

All the other proposals in the cross-party amendments advocated by the noble Lord, Lord McKenzie, the noble Baroness, Lady Hanham, my noble friend Lord Tope and the noble Baroness, Lady Gardner, are extremely important from that perspective as well. The scale of fraud and lawbreaking around these short-term lets will otherwise increase and so will the nuisance and noise for residents. Both the tourism industry and local councils have made a very strong case, and we should adopt each one of those points. I was very glad to hear the noble Lord, Lord McKenzie, say that if this is put to a vote, it will be put as a package. The package of amendments is extremely important.

Whatever happened to localism? I thought that we had been debating it for the past few years. What could be more attuned to localism than the amendments that are on the Marshalled List today?

Baroness Gardner of Parkes (Con): My Lords, I will address the points made by the noble Lord, Lord Ahmad, in his speech. He mentioned that there were 4 million overseas visitors to London last year. I should also start by reminding the House that my interests are on the register and that I am the owner of leasehold flats.

First, the noble Lord talked about the potential breach and the £20,000 fine. Is he aware that no one—but no one—has been asked to pay a £20,000 fine for an illegal letting? Boroughs have not implemented that at all. Then he talked about the 90 days in the calendar year. However, 90 days is three months, and if you choose to let in, say, October, November and December, it is a new calendar year for January, February and March—so you can have six months instead of 90 days, which is why 60 days seems to be a more reasonable amount.

The noble Lord said that disproportionate bureaucracy is involved in applying for planning permission. I agree with that, but local councils are willing to have a 24-hour online notification period. What could be more in tune with modern living and with the idea that, as the travel people say to you, we need to be able to supply someone with accommodation within 24 to 48 hours? If councils are prepared to accept that as a notification, surely that is keeping right up to date with modern practice. Your person could fly in tomorrow, in 24 hours, provided you have notified the council who it is, how long they are going to be there for and who will be responsible for the property. It is not disproportionate bureaucracy; it is a great reduction in bureaucracy.

My fear is that if you give the Secretary of State these powers, you will be loaded with bureaucracy and delay. Nothing is going to happen quickly. What if the threat is a terrorist one? By the time you have gone through the Secretary of State and everything, it will be too late. When I saw what happened in Sydney recently, I found it such a shock and realised that one of these terrorist attacks could happen anywhere in the world. Why should London think it can escape? We have even read in the papers about threats that are coming to us. London is different to other parts of the country: it has a special attraction and is quite a drawcard. Of course a lot of people come. The noble Lord, Lord Ahmad, believes that his amendments will give real freedom and flexibility. I do not agree with that at all. The amendments that we are proposing to his amendment will give much more real freedom and flexibility.

The noble Lord, Lord McKenzie, mentioned the question of a “principal residence”. I know from personal experience that, if a property is empty, the owner is liable for council tax. The day when you could have it empty and unfurnished and no council tax was payable has long gone. Everyone is liable for council tax on a property, and therefore using that as the judgment of whether or not you are suitable to let something is no answer at all. A principal residence has to be a place that you have to be living in some of the time. As we mention, it has to be the “principal residence in London”, as opposed to just a general principal residence. Notification within 24 hours is very reasonable, and could be done by all authorities, although we are not insisting that all authorities do it. We believe there should be a flexibility for local authorities, because what is someone’s problem today will be someone else’s tomorrow. These problems move around rather than just staying in one place—conditions change. On Report, I mentioned that Camden was very upset about the huge number of council properties there that were being let on these short lets.

[BARONESS GARDNER OF PARKEs]

The noble Lord mentioned that he thought the provision relating to previous offenders was unreasonable. I do not think it is at all unreasonable. The fact that you cannot get away with it on a repeated basis is a very good justification for us saying that, if it has happened to you before, then things are slightly different.

The noble Lord, Lord McKenzie, mentioned back-to-back letting. I have mentioned how it can turn your three months into six months. Several speakers have also mentioned localism, and I absolutely agree with every word that they have said. However, unless the local authority has some awareness of who is in a property and for how long, it has no idea of what it is dealing with, and anything could happen.

The noble Lord, Lord Ahmad, mentioned the consultation document. I have mentioned before that I have asked who gave what answers to the consultation and have been denied an answer—not once, but three times—when I have tabled that Question before the House. Why are they so frightened to publish the consultation answers? Why has he not said tonight what they are? I find it unbelievable that you can table a Question and it can just be ignored by the Government of the day. That is very strange.

I have seen this short-letting business in practice and in reality—not personally, but it has been reported to the management of the block that I own flats in. Ten people come every fortnight, brought from the airport in a bus, and all of them live in a one-bedroom flat. I believe there should be a limit on how many people can live in a one-bedroom flat. There are three of these flats in a block where there is a communal hot water system—30 extra people in a 15-flat block is a huge drain on the central heating, the hot water and everything else. It is not fair to people. Elderly people living in the block have found it quite terrifying to have strangers coming in who abuse them and push them out of the lift so that they can take over. It is really unbelievable.

Many of them now have keys to the street door, but they do not even need them: they go down, open all the fire doors and leave them open, so there is no protection from anyone coming in from the street at all. Younger women have been threatened in these blocks. I cannot claim to have been personally affected, because my flats are higher up in the block and fortunately are not involved, but the lower floors suffer so badly. It is incredible that this goes on. Moving this into the hands of the Secretary of State would be wrong. It is right that we should have regulations and strange that we have not been given answers to Questions we have asked. I strongly support the amendment tabled by the noble Lord, Lord McKenzie.

6.30 pm

Lord Tope (LD): My Lords, I have also added my name to the other three from both sides of the House. I have no personal interest to declare, other than that I am a resident of outer London, where this is not yet a problem. I stress “not yet” because the issue is growing so fast and exponentially that it is only a matter of time before it becomes so: not just in central London, where it is of major significance now, but elsewhere in London and in other parts of the country, although they are not affected by this legislation.

I spoke about this at Second Reading in July, at greater length in Grand Committee and on Report. The reason was that I learned more and more about the issues that residents of central London experienced daily from indiscriminate and largely unregulated short-term letting. To that extent, all of us are agreed—and agree with the Government—that we have no objections whatever to London residents wishing to sublet their London residence for a short period while they are on holiday or otherwise away. Where it becomes more difficult is when this grows and in many places, particularly in central London, becomes an industry.

I have been helpfully advised by Westminster City Council throughout this process. For understandable reasons, Westminster has experienced this issue hugely. It told me back in autumn that for some time it has employed between four and six planners solely to deal with the enforcement of this issue of short lets. It has considerable experience both of the problem and of trying to enforce the law as it stands.

To digress for a moment, on Report I quoted what I had been told by the leader of Westminster City Council, who had told me:

“There has been no engagement with this local authority either at a political or an officer level”.—[*Official Report*, 11/02/15; col. 1306.]

In reply to the debate, in col. 1316, the noble Lord, Lord Ahmad, denied that and said that there had been full engagement with London authorities, specifically with Westminster. A few days later, on 13 February, the leader of Westminster City Council wrote to Lord Ahmad, saying that this was categorically “not true” and there had been no consultation with Westminster at that time. She wrote:

“I should also note that Westminster had no advanced knowledge of the detail of the policy note”,

which had then just been published,

“and would have been left to read about it online or in the newspapers”.

When the noble Lord, Lord Ahmad, replies, does he wish to put the record straight? Like me, I am quite certain that the Minister was speaking in good faith. I repeated what I had been told. I have no doubt that he repeated what he had been told, but he and I now have in writing from the leader of Westminster City Council that he had been misinformed. He may wish to correct that.

Westminster has been helpful in all this. It speaks from experience and it is true to say that it would much prefer us to go for a 30-day limit rather than a 60-day one. Any limit is arbitrary, of course, and we have gone for a compromise. However, the most important issue for Westminster City Council, and any other local authority that has to enforce this, is that it must have some system of registration. To quote again what I have been told by Westminster, without that,

“we simply would not be able to identify where a property was let illegally on a short-term basis”.

Unless there is a registration system and the regulations require it, albeit a quick, simple, online system, which Westminster says they can set up probably in a matter of hours, then all the regulations—whether they comply with our amendments or the government amendments—will, frankly, be unenforceable and meaningless. I hope that the Minister, when he replies, says at least that the Government will require it in regulations.

Lord Rooker (Lab): I do not want to interrupt the noble Lord, because I agree with everything he has said. When he discussed this with Westminster, I am curious to know whether they discussed the insurance implications—not so much the contents, but one assumes that the owner in a block of flats pays insurance through the service charge. Quite clearly, the lease must be being breached in the sense of the numbers. The insurance companies must have some view about this, because it leaves everybody else liable and may leave the owner of the particular dwelling subject to sanctions by the insurance company. That may be a route to helping to solve the problem.

Lord Tope: The noble Lord asks if I discussed this with Westminster: specifically no, not with Westminster City Council. However, in the course of the many months that this has been going on, my noble friends and I have heard from numerous individuals and organisations involved in this. It is indeed one of the issues that others have raised and the noble Lord is right to draw attention to it. Others have been health and safety, fire regulations and all sorts of issues, which will be helped, to some extent, by whatever regulations are introduced.

I began by saying I wanted to be brief. I think that I am temperamentally incapable of being brief on this issue, but I will try. On registration, which is absolutely critical, I will quote from the letter that the leader of Westminster City Council wrote to the noble Lord, Lord Ahmad, on exactly that point. She concluded by saying:

“Having dismissed the suggestion of a simple, light-touch notification process for those seeking to let out their property on a short-term basis”,

which is what the Minister did at the previous stage, she asks,

“how will a local authority be able to identify and therefore enforce against a property being let for the 91st day within a calendar year?”.

I re-emphasise the point because it is critical. Unless we have some sort of notification and registration process, it is simply unenforceable, whatever else we say and do.

The other issue I want to speak to briefly is how we determine that the property concerned is indeed the residential property belonging to the person letting it. It has been suggested that this is done by the requirement, in the Government’s amendment, to pay council tax. We all know that lots of people pay council tax, but it is not necessarily their residence, let alone their principle residence. It is a bit unusual for a Liberal Democrat to quote Westminster City Council so frequently, but it does have the greatest experience on this. It says:

“This provision would therefore change nothing. The real change would be if the Government stipulated that only principal permanent residences were eligible for short-term letting”.

That is the purpose of the amendment in our package.

We are now at the last possible stage of this Bill in this House, apart from ping-pong, and we need to understand why we are at this stage. I raised this issue—as did others—at Second Reading in July, we had a considerable debate on it in Grand Committee on 30 October and we returned to it in February, one

day after the Government finally published their policy guidelines and then only under considerable pressure from the noble Lord, Lord Ahmad, who realised that he would have to reply to the debate. We are now trying to put into the Bill details of regulations that should have been properly and fully consulted over that nine-month period. We should have tried at least to reconcile the differences between the different interests—and they are substantially reconcilable if the Government had ever tried. The one local authority most directly involved and with the most experience states in writing twice that up until a week ago, it had had no such consultation.

We are now at the stage where the Government have understood, as I pointed out on Report on 11 February, that it is too late for the regulations to be tabled to receive their 40-days waiting period to be considered in this Parliament. On Report, that was impossible; it is clearly even more impossible now. For this Government not to give a blank cheque to whomever forms the next Government and whoever is the next Minister, we are now putting in the Bill details that ought to have been in regulations, drafts of which should have been produced months ago, discussed and consulted on so that whatever we are to legislate for was clear—hopefully agreed, but at least we could agree where the differences are. We are at the last possible stage putting in the Bill just what the Government until now said that they would not do, but ought properly to be in regulations that have been consulted on and largely agreed.

Baroness Shields (Con): My Lords, I put on record my support for the measures being introduced by the Government to reform short-term letting across London. I do that in my capacity as the Prime Minister’s adviser on the digital economy, but also as the chairman of Tech City. Over the recess, noble Lords will have received a report entitled *Tech Nation*, which detailed the enormous social and economic benefits being generated by the digital economy—across the country, not just in London. The accommodation sector is a prime example of the sharing economy. It is led by a number of high-growth businesses in the UK which are global leaders in their field. They are hiring a lot of people to support those businesses. It also gives individuals the opportunity to leverage an unused asset and to generate income for themselves and their families.

In my role as chairman of Tech City, I have seen the enormous opportunity that that presents to the UK economy. I see five key benefits as a result of that reform. The first is a more optimal use of space by allowing short-term letting for short periods when homeowners are out of town, to utilise existing housing stock in a much more efficient manner. Secondly, it would be a boost to family incomes. The supplementary income derived from short-term letting can help individuals and families to top up their immediate incomes.

Thirdly, the reform will deliver more taxation to the Exchequer. Any earnings accrued via short-term lettings will have to be declared, thereby boosting Treasury receipts. Fourthly, the reform will provide more options for tourists. Many tourists around the world are now opting to rent a home versus staying in a hotel, especially

[BARONESS SHIELDS]

for groups or families who may need a large living space or a garden, which a hotel or bed and breakfast simply cannot provide. Finally, this reform will help to boost local businesses and employment. New hospitality providers are creating large numbers of jobs. In addition, short-term lets often take place outside central areas, so businesses which may not have historically benefited from tourist footfall may now benefit from tourists staying in their area.

Aside from those overarching benefits, the reform will also provide clarity to Londoners who are now facilitating short-term lets and ensure that they take place in a more secure and regulated manner.

I understand and respect the concerns raised by Peers across the House related to unintended consequences of the reform. However, I am satisfied that the Government have now put in place measures which will protect London's long-term housing stock and residential amenity. Specifically, the reform will be limited to those who are liable to pay council tax. A limit of 90 days in any calendar year for which residents can let out their residence will also ensure that homes are let out only for short-term occasions. Local authorities will also have power to apply to the Secretary of State for specific areas to be exempted from the provisions. In my view, the additional safeguards called for by the amendments are unnecessary and run counter to what we should be seeking to deliver: a proportionate, straightforward and progressive set of rules.

I should like to tackle the issues in turn. First, it is proposed in Amendment 7 that the total number of days in a calendar year for which a resident can let their property should not exceed 60. In my view, that is far too restrictive and fails to acknowledge the working and living patterns of many Londoners today. Other cities have reformed their laws to allow many more days to let. Paris, France, allows 120 days, Hamburg 180 days, and San Jose, in the heart of Silicon Valley, also 180 days.

Secondly, it is proposed in Amendments 6 and 8 that the reform should be restricted to principal London residences only. I believe that it should apply to all residences. Often, secondary homes are left empty. In my view, from time to time, those homes should be available to let and utilised more efficiently.

Finally, on exemption powers, although I acknowledge the potential need for the Secretary of State to exempt certain areas from the new provisions, that should be the case only in extreme circumstances and where there is sufficient evidence that residential amenity is negatively impacted. The granting of exclusion powers to councils to restrict short-term letting to specific areas would, in my view, result in a regulatory patchwork across London that would provide neither clarity nor consistency for homeowners.

6.45 pm

Lord Rooker: Given the assuredness and spirit with which the noble Baroness is speaking for the Government, before she sits down, will she ask the Minister to tell us about the results of the consultation? In the mean time, will she tell us whether she has been privy to the results of the consultation in preparing her speech?

Baroness Shields: I am sorry, I missed that. I did not understand the last question.

Lord Rooker: I am asking the noble Baroness whether, in preparing her speech, she has been privy to the results of the consultation.

Baroness Shields: No, I have come to present the view of my declared interest in this new sector of the economy. I am not privy to that information.

The Government's proposals aim to allow people to short-term let their residences while they are away, while ensuring that local communities are protected. I believe that the right balance has been struck. That is why I support the reform and urge your Lordships to vote in favour of the government amendment and against the other amendments which have been tabled on the issue.

Lord Ahmad of Wimbledon: My Lords, we are discussing short-term lets, and it is perhaps ironic that we have had a long-term slot when it comes to issues of deregulation. We are talking about London, and people have talked about London specifically. Let me put it into context as someone who was born in London, educated in London, worked in London, lived in London and represented a London council. Unlike my noble friend, who has had a very distinguished career in the London Borough of Sutton, I had the honour and privilege to serve in the London Borough of Merton, which, as we all know, hosts the great event that we know as Wimbledon. Therefore, it is my great honour also to carry it in my title. Perhaps there are people in Wimbledon who currently let their properties on a short-term basis.

It is important that we respond not just to the challenges and concerns that have been expressed today, to which I will come specifically, but acknowledge that this is commonplace not just in inner London; it is experienced, perhaps with a different perspective, in other boroughs across our great capital.

Starting with the noble Lord, Lord McKenzie, first, I put on record his broad support at least for the spirit and principle of what we are trying to achieve. In noting that, I thank him for his constructive discussions. We have not always agreed on the issues, as is clear from our debate on Third Reading thus far, but I have always found him to be someone with whom I can have a constructive and honest exchange. I put on record my deep thanks to all noble Lords with whom I have had meetings since I have taken over this ministerial responsibility, but particularly to my noble friends Lady Gardner, Lady Hanham and Lord Tope, who have always been courteous in their exchanges. To "courteous" I wish that I could add "uncritical", but clearly they have had concerns, which they have expressed again today. However, I assure my noble friends and all noble Lords that I have taken that in the spirit that it has been well intentioned and reflects noble Lords' experience in local government.

In talking about the amendments to government Amendment 4, the noble Lord, Lord McKenzie, asked about this being an integrated group of amendments. We agree that we are treating these amendments as consequential.

The noble Lord, Lord McKenzie, and my noble friend Lord Tope also raised issues about notifications to local authorities, as an addition to some elements that the Government have already introduced. Perhaps I may repeat something which have I shared with them at previous stages of the Bill's passage: we believe that this would be a further burden on the person letting. It is not a restriction which applies elsewhere in England. Part of our principled stand on this is that we are seeking to bring London into line with other great cities around the country.

The noble Lord, Lord McKenzie, and others including my noble friend Lady Gardner also raised the issue of two periods of 90 nights being allowed to run across calendar years. We recognise that it would be possible for 90-night periods to run continuously across the calendar years but we also think it right not to be overly prescriptive about when the 90 nights should take place in the year. I commend my noble friend Lady Shields for her contribution and I congratulate her. When you are standing in your Lordships' House, there is always the great expertise in what others have expressed—not only others; I pay tribute to her own expertise in this field. She highlighted what numbers of nights some of the other great cities around the world apply.

Several noble Lords asked why we need the Secretary of State's consent. We believe that the Secretary of State's intervention will ensure that the provisions are applied appropriately across London and that there is consistency and fairness to them. The noble Lord, Lord McKenzie, asked whether Amendment 4 could be used to disapply exemption from properties where there has been a statutory nuisance. I draw his attention to proposed new Section 25B(2), which allows the Secretary of State or a local planning authority to make a direction where,

“it is necessary to protect the amenity of the locality”.

Indeed, such a direction could be made when there has been a statutory nuisance.

I believe that the noble Lord, Lord McKenzie, also raised limiting council tax liability, and whether that could still be done commercially. The council tax liability test has to be read and taken in conjunction with the 90-day limitation, as I said in my opening remarks. That will make it unattractive to undertake commercial letting on a long-term or continuous basis.

The noble Lord, Lord McKenzie, also talked about building on the government amendments. As I said at the outset of my closing remarks, I welcome the spirit in which our discussions have taken place. One of the contributions today alluded to the fact that Governments change positions, or that the Bill today is not where it had been. My noble friend Lord Clement-Jones raised a specific question on this. In my time as a Minister responding from this Dispatch Box, I find that you are in one of those situations where if you do not change, you are accused of being terribly rigid and not flexible in listening to your Lordships' House. However, when you change you are told, “This is not what was presented to us initially”. Perhaps some answers on the back of a postcard would be welcome. I jest, of course, but the important point here is that the Government have listened carefully to the concerns and expressions that

have been raised across Parliament, both here in your Lordships' House and in the other place. We have sought to provide a correct balance in what the Government are presenting.

Several concerns were expressed by my noble friends Lady Hanham, Lady Gardner of Parkes and Lord Tope about the consultation. I regret that my noble friend Lady Gardner feels that the responses I have given in this respect have not answered her question. I gave my latest response only yesterday, as I believe she acknowledged. I wrote to my noble friend on the details of the consultation but in the interests of the public record let me reflect on the public consultation held last year, in which local authorities were asked the question. As noble Lords will know, including the Corporation of London there are in total 33 local authorities across London. Fifteen London authorities responded in total. Eight authorities opposed reform of the legislation. They were—I will feel a bit like a train announcer here—Haringey, Enfield, Camden, Westminster, Newham, Redbridge, Lambeth and the City of London. Seven were not opposed to a review, which included Lewisham, Sutton, Southwark, Hammersmith & Fulham, Harrow, Islington and Greenwich.

I also wish to set the record straight on the issue of Westminster. My noble friend Lord Tope is correct that I have received a letter from the leader of Westminster Council—indeed, I have responded to her—but I want to put officially into the record what has happened. In addition to taking full account of the written representations we have received, officials in the Department for Communities and Local Government have met a number of local authorities, including Westminster Council, on 20 June and 7 October 2014 and 26 February 2015. A further meeting with Westminster was also scheduled for 3 March. I hope that these specific dates give some reassurance to my noble friends, given the concerns they expressed.

I think that I have covered the concern about the Government changing position which my noble friend Lord Clement-Jones posed, but on transparency for police and local authorities, let me assure my noble friend that we believe that our measures will offer the assurance to Londoners that they can do what they like with their homes, as with anywhere else in the country. However, the police and local authorities do not have this power anywhere else. This does not affect the police and local authorities in acting against any antisocial behaviour, or in tackling the genuine concern about terrorism. My noble friend Lady Gardner raised that concern and talked of Sydney, but it is a tragic fact that we have been victims of terror attacks right here in our great capital city. Nothing is proposed in the Government's amendments which seeks to lessen the importance or priority that they are giving more generally to tackling that. I know that that sentiment is shared by all noble Lords across the Chamber.

My noble friend Lady Gardner also raised the issue of the £20,000 fine for short-term letting. Enforcement action is of course taken at the discretion of local authorities. What is significant—this is what the government proposals are about—is that authorities

[LORD AHMAD OF WIMBLEDON]
still have the ability to take action, which acts as a disincentive and deterrent to anyone considering breaking the law. That will continue.

Lord Rooker: For the avoidance of doubt and so that it is on the record, when the Minister read the list of authorities out earlier he said that 15 replied. He mentioned that seven did not disagree; I take it that eight disagreed. Can we get it on the record that the majority of local authorities which responded to the consultation disagreed? Do I have that correct?

Lord Ahmad of Wimbledon: When the noble Lord referred to the 15 and the seven, I thought, “I hope I have got my maths right”, so I am glad that we said that there were eight and seven. He is quite correct. I mentioned those authorities which did not want the review to happen and, subsequently, the seven which did not object. To clarify that point, I say that the noble Lord is quite right. I hope that I am being clear. I am being detailed in my response so, while I am not expecting it, I at least hope—and one should never give up on hope—that I shall carry the House in certain elements of what I am saying, and that there will nevertheless be clarity in covering the issues that have been raised.

My noble friend Lord Tope also raised council tax liability as a way of demonstrating residency. We believe that this provision distinguishes between private and business premises because it requires liability for council tax, which means that if a property was used as a residence, a hotel or a hostel, it would be liable for business rates. Combined with the 90-night limit, we believe that this provides an appropriate safeguard against short-term letting on an ongoing basis.

I welcome the interventions of the noble Lord, Lord Rooker, as I do those of all noble Lords. I listened to him attentively. He raised the issue of insurance. It is of course a matter for landlords to enforce, and for tenants to abide by, the terms of the lease and any insurance policies. Our amendments relate to the need to apply for planning permission and do not affect issues under an existing lease or indeed an insurance policy.

I hope that I have addressed most, if not all, of the issues raised in the hour and 10 minutes that we have had on this group of amendments. This is an important area, and I assure the House again that the Government have listened to the concerns expressed during the passage of the Bill. We believe that what is in front of us today, and what we are proposing more generally, is a balanced approach, with the objective of updating a law that would work for the benefit of ordinary Londoners wishing to let their homes in a legal way.

I hope that noble Lords will accept the reassurances that I have given again today: we are proposing amendments to seek to prevent the loss of housing stock by allowing the short-term letting of homes for a maximum of 90 days without the need for planning permission. I stress again that there are safeguards in the Bill to check that the added freedom will apply only to those people who are providing their homes and paying council tax; and we are providing local

authorities with the power to apply to the Secretary of State where exceptions may be and where local amenities need to be protected.

I believe that the Government have listened and present a balanced perspective on where we are today. If I may, I end with the words of the song:

“Maybe it’s because I’m a Londoner
That I love London Town”.

I believe that what the Government have proposed does just that.

Lord McKenzie of Luton: My Lords, this has been an extensive debate. I am grateful to all noble Lords who have spoken in support of the amendments: the noble Baronesses, Lady Hanham and Lady Gardner, and the noble Lords, Lord Clement-Jones and Lord Tope. I hope they will forgive me if I do not pick up each of the very strong comments that they made.

To the noble Baroness, Lady Shields, I say simply that no one is saying that there should be no opportunity to boost family income or to use a property when someone is abroad—indeed, it might lead to interesting opportunities for tourism—but this is a question of balance and the protection of the local community as well. Just because something can be accessed digitally does not mean that you should disregard other issues, particularly around enforcement.

The Minister is right that over the months we have perhaps narrowed the gap. He asserts that the Government and he himself continue to listen, and I am sure that he does. However, I hope he will respect when I say that on this occasion they have not listened enough. I wish to test the opinion of the House.

7.02 pm

Division on Amendment 5

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7.14 pm

Amendments 6 to 16 (to Amendment 4) not moved.

Amendment 4 agreed.

Clause 44: Short-term use of London accommodation: power to relax restrictions

Amendments 17 to 19

Moved by Lord Wallace of Tankerness

17: Clause 44, page 37, line 2, leave out from “instrument” to end of line 6 and insert “provide that section 25(1) of the Greater London Council (General Powers) Act 1973 does not apply if conditions specified by the regulations are met.”

18: Clause 44, page 37, line 7, leave out subsection (2) and insert—

“() Regulations under subsection (1) must include provision corresponding to section 25B of that Act.”

19: Clause 44, page 37, line 21, leave out subsection (6)

Amendments 17 to 19 agreed.

Clause 57: Household waste: de-criminalisation

Amendment 20

Moved by Baroness Hanham

20: Clause 57, page 47, line 1, leave out subsection (6)

Baroness Hanham: My Lords, I do not think that I need to delay the House too long on this, but I want to draw attention again to an issue that involves overriding what London is doing, which is becoming quite a concern. It relates to how waste disposal penalties are going to be put forward. London has been running its own waste penalty system since the London Local Authorities Act 2007; it has its own system set up and runs a very tight way of dealing with this, which is the forerunner of what is being proposed for the nation as a whole.

7.15 pm

If London was being scooped into a system that was exactly the same as the one it has, perhaps we would not be so perturbed. But Schedule 12, which we are seeking to remove along with subsection (6), seeks to implement the most bureaucratic and byzantine scheme of penalty charging that I have seen. The basis of this is that London was the leader, forerunner and developer of the scheme of decriminalisation of penalty charges for people putting out their waste, dumping waste or putting it out inappropriately. Before that, it was done under the Environmental Protection Act and the fixed penalty notice, which of course is a criminal penalty.

So London led the way on decriminalising that and having a penalty charge notice scheme. Ten years later, the Government suddenly caught up with the fact that that was happening and saw that it would be a very good idea in the rest of the country, so that is what this clause tries to implement. It takes five pages of the schedule and the clause to put in a penalty scheme for the rest of the country, with the implication that London is now part and parcel of that scheme, instead of leaving it with the system that it has up and running, leaving it alone and letting it carry on doing what it is doing. It already has an appeals system and a penalty charge notice system that has been decriminalised.

What the Government are doing, in these five pages of legislation, is byzantine in its detail. If an enforcement officer identifies something inappropriate, they cannot just issue a penalty charge notice; they have to give a written warning. So there is a written warning that says, “We are about to think about giving you a penalty charge notice”. Having done that, they have to wait a bit longer and then issue a notice of intent to issue a fixed penalty notice, which is issued with 28 days in which to make representations. To be fair, the proposed scheme gives, as the London scheme does, three months in which to answer that. But then a final notice is issued with a penalty charge; then there is an appeal to an independent adjudicator, who can either uphold the penalty charge or turn it down. By the time that the whole process is finished, anybody who has done it will either have left the country or be untraceable.

On Report, I complained about all this, and I am extremely grateful to the Minister because he took time out to meet the noble Lord, Lord Tope, and me, and go through our concerns. We were very grateful for that. It gave me the opportunity to bring this back for another look, to see whether the Government, if they want to do this long, protracted and difficult scheme that they have set out in the rest of the country, could just leave London to do what it is doing, carrying on as it is doing and working in its own way. That would not detract from any actions that are taken and would make the process very much shorter, as well as leaving London doing what it set out to do itself.

This takes me back a bit to what I said on the previous amendment. There is a tendency for London local authorities to be overridden by changes to their legislation. They put forward private Bills on an ad hoc and sometimes annual or biannual basis. They are supported by all the local authorities—they have to be—and are financed by all the local authorities. They therefore comprise specific legislation referring to difficulties in London or the way that things need to be done there. It seems to me to be moving away from what we were talking about earlier in terms of localism and doing things the way they should be done and from devolution, which is happening all the time now, to making all local authorities act in entirely the same way.

London is a leader in this area. I believe that it should be left to get on with it. If the rest of the nation wants to follow the requirements in the six or so pages of the relevant schedule detailing how this issue should be resolved, let it get on with it, but my amendments would relieve London of the necessity of doing so. I beg to move.

Lord Harris of Haringey (Lab): My Lords, I am grateful to the noble Baroness, Lady Hanham, for bringing this amendment back. I did not have the benefit of attending the meeting that she had with the noble Lord, Lord De Mauley, but presumably his explanations of why the Government were doing this crazy thing were not sufficiently compelling to persuade the noble Baroness not to bring back the amendment.

The Minister has to answer some very simple questions if he is to persuade anyone that this is a good idea. The first is: what is the problem that the Government are trying to solve? What is wrong with the scheme under

the London Local Authorities Act 2007? What is failing in that scheme? What is the evidence that that is not working or that people are being unnecessarily penalised for a first-time offence? It looks as if the Government have brought forward a Deregulation Bill and have decided not to deregulate something in London but to complicate the regulatory process by introducing extra stages, processes and bureaucracy. If I thought I understood anything about what this Government were trying to do, it was that they believed in simplifying red tape and eliminating wasteful form filling and processes. However, the Government's proposal makes this area more complicated, not less. The Minister needs to explain why that is the case and why this is an additional regulation Bill rather than a Deregulation Bill.

The Minister needs to explain another thing. I thought the Government believed that localism was another important principle, but the London local authorities have come together and developed a scheme which is working well—unless the Minister can produce evidence at this 11th hour of a whole series of problems of which nobody else was aware. However, we now have an example of the heavy-handed bureaucracy of the Department for Communities and Local Government, and the Minister's right honourable friend Eric Pickles saying, "I want to put the dead hand of central government authority on to London local authorities". How does this square with the Government's policy on localism? I suspect that this measure was dreamt up for reasons of simplicity without anyone looking at the details, and now nobody is prepared to admit that they got it wrong. However, the reality is that it imposes additional regulation, goes against the principle of localism and we will end up with more bureaucracy and problems to solve a problem which does not exist.

Lord True (Con): My Lords, I apologise to the House for not having been able to take part in previous discussions on this matter, but I speak as leader of a London local authority and I consider that it is my responsibility to draw the House's attention to the way this measure is perceived by a leader of a London authority. I am also by training a historian of Byzantium. I think that very few Byzantine emperors would have devised such a system for their capital city.

On the previous amendment, the Minister on the Front Bench argued very strongly against increasing bureaucracy and extra red tape. He also argued that London needed to be deregulated. However, I anticipate that, just a few minutes later, the Minister now on the Front Bench—my noble friend Lord De Mauley—will tell us the opposite of that and, as the noble Lord, Lord Harris, suggested, will tell us that we need more complication and further regulation. I simply do not see the logic of that and I do not know of another leader of a London authority who shares the Minister's view.

We heard the representations made by London authorities on a previous amendment. It is important to realise that this is not some bone-headed resistance from a bureaucratic body. People who are talking to government, or who wish to talk to government and advise them, have authority and the responsibility of satisfying the people of London on a day-to-day basis

that their streets can be kept clean and be competently administered. I believe that they are clean and competently administered in most cases. We have a non-criminal system that was recently established with general consent and which I do not believe needs to be tampered with. If the Government really believe in deregulation and devolution, there is no rationale whatever in changing the London system.

My authority is a keen promoter of recycling. We pass all the Pickles tests. We do weekly collections and even collect from side alleys. We do not have bin snoopers but we do have the opportunity to impose a light-handed touch of regulation. In five years as leader I have not had a single call, letter or email complaining about this system. There is no evidence base that I am aware of to justify imposing a more complex system on London.

I suspect that at this stage the Government are not prepared to change their mind. That is a pity in the light of the arguments in the record that I have read and those that I have heard. Of course, it would be perfectly possible to proceed with two parallel systems. In fact, it would be interesting to see whether the Government's more bureaucratic system outside London was more effective than the less bureaucratic system inside London. That could be a sensible way to test public policy. Even at this late stage, I urge my noble friend to consider whether the Government could not leave London well alone. That would not stop anything that is planned for the rest of the country in terms of decriminalisation. That is the considered view of experienced people in London based on their experience of doing the difficult job of trying to administer London and at the same time reduce staffing in local authorities and not take on extra bureaucrats to implement ever more complex systems. I hope that my noble friend will reflect on that when he comes to reply.

Lord Tope: My Lords, I am the fourth current or former London borough council leader to speak in complete agreement with my colleagues—indeed, my former colleagues. The essential point has been made: what is wrong with the London legislation passed in 2007, which applies across London and was supported by all the London boroughs—it has to be supported by the London boroughs—that we now need Clause 57, at the end of five pages in the principal legislation, specifically deleting the provisions for London, and a four-page schedule, Schedule 12, implementing them?

There must be a pretty serious problem in London that needs fixing. It is supposed to be such a serious problem, but neither a current London borough council leader nor three former leaders from different parties and different parts of London is aware of any problem at all. The London legislation largely meets the Government's intentions either specifically in decriminalisation or certainly in intent and purpose. The differences between the schemes are relatively minor, certainly not such as to require nine pages of principal legislation to deal with.

We ask, I think in my case for the third time during the passage of the Bill, what is so wrong with the London legislation that it requires this Bill to change it. What are the problems? What are the issues? There is no record of people being incorrectly or inappropriately

prosecuted. Indeed, there is hardly any track record of people being prosecuted at all, so that is not really the object of it. The object is to encourage people to recycle and to comply, not to penalise them. It has a very well tested appeals system, albeit not tested in waste collection, which has not been a problem. It is the same appeals system as is used for parking appeals, which is certainly well tested in London.

We have a good system that has been in legislation for just about eight years. We have a good appeals system and a waste collection system that works. What exactly are the Minister and his colleagues trying to fix with this legislation?

7.30 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con): My Lords, I hope noble Lords would accept that there appears to be broad agreement that a fair system of penalties, as established in Clause 57, should apply to household waste collection in England. Clause 57 would remove the criminal sanctions currently available under the Environmental Protection Act 1990. It would ensure that people are treated fairly and consistently by offering individuals a fair chance to represent themselves and by introducing a “harm to local amenity” test.

Local authorities will have the power to issue fixed penalties of between £60 and £80 if a householder does not comply with household waste collection requirements, and this causes a nuisance or is detrimental to the locality. In practice, this could be when waste causes obstruction to neighbours, attracts vermin, unreasonably impedes access to pavements, or is an eyesore. Through Schedule 12, we seek to amend the London Local Authorities Act broadly to mirror the changes to the Environmental Protection Act. Under both pieces of legislation, civil sanctions would apply when a householder’s failure to comply causes a nuisance or is detrimental to any amenities of the locality. Householders would receive warnings before being issued with a penalty and the level of fines would be the same.

I turn now to my noble friend Lady Hanham’s amendments, Amendment 20 and Amendment 36. I thank her and my noble friend Lord Tope for discussing these matters with me between parliamentary phases. I very much hope that the noble Lord, Lord Harris, was invited to the meeting by my officials; I asked them to invite him. I appreciate my noble friends’ concerns and those expressed by noble Lords this evening about changes to the waste collection system currently operating in London. Indeed, in following London’s lead we recognise that a decriminalised approach, as is used in London, is more proportionate than a system based on criminal sanctions. We want the approach used throughout England to be based on this type of system, with additional safeguards in place to ensure that people are treated fairly.

Before turning to points of detail, I would like to make a general point. The Government are firm believers in localism. This is, of course, not just about the powers available to local authorities, but about empowering local communities, neighbourhoods and individuals. Our proposals seek to reduce a regulatory burden that currently affects householders.

Lord Harris of Haringey: My Lords, can the Minister explain how much of a nuisance the regulatory burden is in London?

Lord De Mauley: My Lords, I am trying to get there.

In our view, legislation should not provide for people to be issued with, or threatened with, financial penalties the first time they make a mistake. That is why we want local authorities to give householders a written warning. The requirements on people are not always obvious, particularly when they move to an area where a different collection system applies. It is right that people should find out what they have done wrong and should have the opportunity to rectify mistakes before they are asked to pay a penalty. People in London have as much right to this opportunity as anyone else in England.

Based on what we have heard from local authorities, we do not believe that this will add significant burdens compared with how the current arrangements operate. We know that many authorities already communicate well with their residents and seek to educate them if they are having difficulties with collection requirements, but if we do not amend the London Local Authorities Act, this legislation would still allow someone making a mistake for the first time in London, but not elsewhere in England, to be penalised. We do not believe that that is fair or right.

I am aware that some noble Lords consider that the system we propose is bureaucratic. Indeed, my noble friend described it as byzantine. She used the words “long and protracted” and mentioned our five-page schedule. Let me explain why I do not believe that we are introducing significantly more bureaucracy compared with the current London system.

London Councils produced a 22-page guidance document in December 2013 on the current system operating under the London Local Authorities Act. According to this, London authorities issue householders with a penalty charge notice. I quote from the guidance:

“Depending on each local authority’s policy, a verbal or written warning may be given before escalating”,

to a penalty charge notice. The householder then has 28 days to make representations to the London authority. If representations are made, the authority then has 56 days to make a decision. If it rejects the representations, a notice of rejection must be served. The householder may then appeal to an adjudicator before being required to pay the penalty. All that is under the current system in London.

Under our proposed system, London local authorities will first issue a householder with a written warning. The next time a householder makes a mistake they may issue a notice of intent. The final notice can then be issued after 28 days, taking account of any representations made. The householder may then appeal to an adjudicator before being required to pay the penalty. Is our proposed system really adding bureaucracy, compared with the current system?

As well as reducing the regulatory burden on householders, our proposals seek to ensure that the level of penalties is proportionate. Given the broad agreement that making a mistake related to household

waste collection should not be a criminal offence, it would not seem appropriate for the penalty to be higher than for a criminal activity. The penalty under the London system for a breach of the rules about presentation of waste is currently set at £110, yet a shoplifter committing a first offence may be issued with a £90 penalty notice for disorder. Under our proposals, councils in London would be able to set the penalty between £60 and £80.

We believe that this range is proportionate, but understand that some noble Lords consider that it will not act as a deterrent. We should remember that for many people in London, as elsewhere, an £80 financial penalty is certainly significant. For people who consider that £80 is insignificant, I ask whether they really consider £110 such a radically different amount that they will treat it as a significant penalty. We believe that £60 to £80 is the right level and that householders in London have as much right to be treated fairly and proportionately as anyone else in England.

Also, I suggest that it would not be right for a “harm to local amenity” test to apply everywhere in England except London. Under the Environmental Protection Act, we propose that householders should be issued with a fixed penalty only if their behaviour actually causes problems in their local neighbourhood. They could receive a penalty for leaving bin bags on the street for days on end, but not for leaving a bin lid open. If we kept the London system as it is, we would be in the anomalous position where the legislation allows local authorities to issue penalties to householders who make any sort of mistake in this area if they live in London, but not if they live anywhere else in England.

We intend to work with local government to produce advice to help local authorities implement the test with confidence. My officials are of course also happy and available to talk to representatives from London Councils and others about the practicalities of operating this system if that would be useful.

This clause and schedule, as they stand, will introduce a proportionate approach, providing appropriate safeguards for householders throughout England, including London. I therefore ask my noble friend to withdraw her amendment.

Baroness Hanham: My Lords, I think I said on Report that I felt really sorry for the Minister having to respond, because it is clearly not an easy clause or schedule to respond to. There is absolutely no rationale to it whatever. The fact is that whatever the Minister has been told to say, this is a much more protracted procedure than is going to go ahead nationwide. Most local authorities will deal sympathetically with people who make a mistake by putting something out in a way that they should not. As I understand it, it does not require another offence to trigger the next stage. It can be the same offence that has not been acknowledged—so the warning of an offence, then a letter of intent, then perhaps a penalty charge notice, then an appeal, then to a tribunal, because under the England procedures you can continue on down the line. I totally fail to understand why London should be encumbered with this.

I did not make the point in my opening remarks about the level of the penalty. I worry that this is being presented by the Minister as a penalty appropriate to shoplifting. In London the penalty for this offence, as he has rightly said, would be in the region of £130, but then so is a parking ticket. London is a bit more expensive in what it does and a shoplifter would probably go to court anyway rather than have a penalty charge notice. Indeed, if people spit chewing gum on to the pavement, we are still looking at the same sort of penalties.

I think this is a daft bit of legislation and I wish to test the opinion of the House.

7.41 pm

Division on Amendment 20

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7.53 pm

Clause 83: Removal of requirement that prison closures be made by order*Amendment 21**Moved by Lord Wallace of Saltaire***21:** Clause 83, page 71, line 1, at end insert—

“() In section 43 (remand centres and young offender institutions), as it has effect on and after the day on which section 38 of the Criminal Justice and Courts Act 2015 comes into force, in the Table in subsection (4)—

(a) in the entry for “Young offender institutions”, in the second column, for “Sections 28 and 37(2)” substitute “Section 28”;

(b) in the entry for “Secure training centres or secure colleges”, in the second column, for “, 28 and 37(2)” substitute “and 28”.

Lord Wallace of Saltaire: My Lords this group of amendments makes minor and technical changes that clarify and improve the drafting of the Bill. Amendments 21 and 22 relate to Clause 83 which will remove the requirement that prison closures are made by order. It does this, in part, by amending Section 43 of the Prison Act 1952. The Criminal Justice and Courts Act 2015, which received Royal Assent on 12 February, at Section 38 substitutes Section 43 of the Prison Act with a new Section 43 which permits the Secretary of State to make provision for the detention of young persons in young offender institutions, secure training centres and, additionally, secure colleges. These minor amendments provide for the removal of the requirement that prison closures are made by order both in respect of Section 43 as it is now, and in its revised form once the provisions in Section 38 of the Criminal Justice and Courts Act 2015 are commenced.

Amendment 27 relates to Clause 88, which will remove the current requirement that providers carrying out children’s social care functions on behalf of local authorities should register with Ofsted. In consequence of the removal of that registration requirement, subsection (2) provides for various references to providers of social work services in the Care Standards Act 2000 and in the Children and Young Persons Act 2008 to be omitted. This amendment would provide for the omission of a further reference in Section 30A(6)(f) of the Care Standards Act 2000 which had previously been overlooked.

Schedule 13, Part 3, will repeal Part 11 of the Local Government and Public Involvement in Health Act 2007 and allow joint waste authorities to be established by secondary legislation. The schedule outlines a number of consequential amendments needed to be made in other legislation as a result of these changes. Amendments 37 to 40 are merely further consequential amendments that take account of legislative changes made since the Bill was introduced, including removing references to the joint waste authorities in other legislation.

Schedule 19 makes significant amendment to the Poisons Act 1972. In particular, it creates new offences. Amendment 43 corrects the form of words for the maximum fine that can be applied to offences in the new Section 8 of the Poisons Act 1972 inserted by paragraph 10. In subsection (1)(b)(ii), the reference to, “level 5 on the standard scale”,

should instead be a reference to “the statutory maximum”. This brings the penalty in line with the usual practice for financial penalties for more serious offences.

Amendments 29, 30, 44 and 45 change the extent of two provisions in Schedule 21. The provisions relate to the repeal of the Mining Industry Act 1920, the Fisheries Act 1891, which I think was probably before all Members of this House were taking part in its business, and the British Fishing Boats Act 1983. The changes are required due to timing and resource problems with getting a legislative consent Motion in place in Scotland during the passage of this Bill. I beg to move.

Amendment 21 agreed.

Amendment 22

Moved by Lord Wallace of Saltaire

22: Clause 83, page 71, line 2, at beginning insert “Until section 38 of the Criminal Justice and Courts Act 2015 comes into force,”

Amendment 22 agreed.

Amendment 23

Moved by Lord Wallace of Saltaire

23: After Clause 84, insert the following new Clause—

“CLC practitioner services bodies

(1) Section 32 of the Administration of Justice Act 1985 (provision of conveyancing services by recognised bodies) is amended as follows.

(2) In the heading, after “conveyancing” insert “or other”.

(3) In subsection (1)—

(a) in paragraph (a), after “bodies” insert “or CLC practitioner services bodies”;

(b) in paragraph (b), for “such bodies” substitute “conveyancing services bodies”;

(c) in paragraph (b), for the words from “undertake” to the end substitute “undertake—

(i) the provision of conveyancing services,

(ii) the exercise of a right of audience,

(iii) the conduct of litigation,

(iv) probate activities,

(v) the administration of oaths, or

(vi) the provision of relevant legal services not covered by sub-paragraphs (i) to (v);”;

(d) after paragraph (b) insert—

“(bza) prescribing the circumstances in which CLC practitioner services bodies may be recognised by the Council as being suitable bodies to undertake—

(i) the exercise of a right of audience,

(ii) the conduct of litigation,

(iii) probate activities,

(iv) the administration of oaths, or

(v) the provision of relevant legal services not covered by sub-paragraphs (i) to (iv);”;

(e) in paragraph (ba), for the words from “bodies” to the end substitute “bodies to carry on—

(i) the exercise of a right of audience,

(ii) the conduct of litigation,

(iii) reserved instrument activities, where the recognised body is a conveyancing services body,

(iv) probate activities, or

(v) the administration of oaths;”;

(f) in paragraph (c), after “requirements” insert “, including requirements about the carrying on of activities which are not reserved legal activities.”.

(4) In subsection (3)(e), after “those bodies” insert “(including information about disciplinary measures taken)”.

(5) In subsection (3C), after paragraph (a) insert—

“(aa) conditions restricting the kinds of CLC practitioner services that may be provided by the body;”.

(6) For subsection (8) substitute—

“(8) In this section—

“administration of oaths” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“CLC practitioner services” has the meaning given by section 32B;

“CLC practitioner services body” has the meaning given by section 32B;

“conduct of litigation” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“conveyancing services body” has the meaning given by section 32A;

“probate activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“relevant legal services”—

(a) in relation to a conveyancing services body, has the meaning given by section 32A; and

(b) in relation to a CLC practitioner services body, has the meaning given by section 32B;

“reserved instrument activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“right of audience” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act).”

(7) After subsection (8) insert—

“(8A) Nothing in this section affects section 13 of the Legal Services Act 2007 (entitlement to carry on a reserved legal activity).”

(8) After section 32A (definition of “conveyancing services body”) insert—

“32B CLC practitioner services bodies

(1) For the purposes of section 32 a “CLC practitioner services body” means a body (corporate or unincorporate) in respect of which—

(a) the management and control condition,

(b) the services condition, and

(c) the authorised person condition,

are satisfied.

(2) The management and control condition is satisfied in the case of a partnership if at least one of the partners is a licensed conveyancer or a licensed CLC practitioner.

(3) The management and control condition is satisfied in the case of an unincorporated body (other than a partnership), or a body corporate which is managed by its members, if at least one of those members is a licensed conveyancer or a licensed CLC practitioner.

(4) The management and control condition is satisfied in the case of any other body corporate if at least one director of the body is a licensed conveyancer or a licensed CLC practitioner.

(5) The services condition is satisfied in respect of a body if—

(a) the body is carrying on a business consisting of the provision of—

(i) CLC practitioner services; or

(ii) CLC practitioner services and other relevant legal services; and

(b) the body does not provide conveyancing services.

(6) The authorised person condition is satisfied if the licensed conveyancer or licensed CLC practitioner by reference to whom the management and control condition is satisfied, or one of the persons by reference to whom that condition is satisfied, is an authorised person in relation to any reserved legal activity involved in the CLC practitioner services that are provided by the body.

(7) For the purposes of this section—

(a) a reference to CLC practitioner services is a reference to services involving the carrying on of such of the following as are reserved legal activities in relation to which the Council is designated as an approved regulator—

- (i) the exercise of a right of audience;
- (ii) the conduct of litigation;
- (iii) probate activities;
- (iv) the administration of oaths;

(b) a reference to designation as an approved regulator is a reference to designation as an approved regulator—

- (i) by Part 1 of Schedule 4 to the Legal Services Act 2007, or
- (ii) under Part 2 of Schedule 4 to that Act;

(c) a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).

(8) In this section—

“administration of oaths” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“authorised person” means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007);

“conduct of litigation” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“probate activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“relevant legal services”, in relation to a body, means—

- (a) CLC practitioner services, and
- (b) where authorised persons are managers or employees of, or have an interest in, the body, services such as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities), except for conveyancing services;

“reserved legal activity” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“right of audience” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act).”

Lord Wallace of Saltaire: My Lords, these new clauses fulfil the commitment made by the Government on Report on 5 February in response to a series of amendments tabled by the noble Baroness, Lady Hayter.

Provisions in the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990 place a restriction on the Council for Licensed Conveyancers which effectively means that it can authorise a body or person only if that body or person is licensed to provide conveyancing services. This is a restriction that none of the other legal services approved regulators has. The purpose of the amendments is to remove this restriction. This is being done by amending Section 32 of the Administration of Justice Act 1985 and Section 53 of the Courts and Legal Services Act 1990.

The amendments also include amendments to Section 32 of the Administration of Justice Act 1985 to cover the full range of reserved legal activities for which the council is an approved regulator or for which the council may in the future be an approved regulator, if it were to be further designated. Any such further designation would require a recommendation of the Legal Services Board and an order under the Legal Services Act 2007. I remark in passing that I think that when my noble friend Lord Smith of Clifton asked his Question this afternoon, I do not think he had in mind the idea of private but approved regulators as part of his universe of regulating agencies.

The proposed second new schedule in these amendments will make amendments to the Administration of Justice Act 1985 which will enable the council to carry out its role as an approved regulator and licensing authority more effectively and efficiently. For example, amendments are made to change the venue for appeals from the High Court to the First-tier Tribunal. I beg to move.

8 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I rise briefly to support these amendments, to which I have added my name. As the Minister said, they rather improve the wording which was accepted in principle in my amendments on Report. They are important because they take forward the intention in the Legal Services Act to increase the availability of legal services. As the Minister said, the CLC—an approved regulator for reserved activities, probate and the administration of oaths—has now been accepted to be the regulator for a wider range of legal services. However, it became apparent a bit belatedly that the Act which created the CLC and set out its powers actually restricts it from the enlarged role which it, the Legal Services Board and the MoJ had envisaged. It was then found that the powers in the Legal Services Act were also not sufficient to make the changes. Without these amendments, the CLC would be able to regulate only conveyancers, which means that a lawyer would have first to train as a conveyancer before being regulated by the CLC for other activities.

The other changes which have been mentioned are to simplify appeals so that any appeals against the CLC’s appeals and discipline committee can be heard by the First-tier Tribunal rather than the High Court, and to allow the CLC itself to appeal against determinations. There is also a provision to allow the CLC to suspend the licences of practitioners to protect the public while they await the outcome of disciplinary actions.

As for the CLC’s own governing council, the current requirement is that the number of lay members must exceed the number of professional members by exactly one. That means that if one of the professional members leaves for any reason, the council cannot continue its work. The amendments would allow for the lay majority to be at least one, which will get over that hurdle. Finally, instead of putting the time that the CLC has to determine applications in statute, in future it will be in regulatory rules. These are sensible and welcome changes. I thank the Government for bringing them forward and their work on this excellent drafting.

Amendment 23 agreed.

Amendments 24 to 26

Moved by *Lord Wallace of Saltaire*

24: After Clause 84, insert the following new Clause—
“Licensed CLC practitioners

(1) Section 53 of the Courts and Legal Services Act 1990 (the Council for Licensed Conveyancers: authorisation of individuals to carry on reserved legal activities) is amended as follows.

(2) In subsection (2), omit “only if the person is a licensed conveyancer”.

(3) In subsection (3)—

(a) for “a licensed conveyancer” substitute “a person”;

(b) for “the licensed conveyancer” substitute “the person in respect of that activity”.

(4) In subsection (4), for “Any such” substitute “If the person granted a licence under this section is a licensed conveyancer, the”.

(5) After subsection (4) insert—

“(4A) If the person granted a licence under this section is not a licensed conveyancer, the licence may be granted as a separate licence or as part of a composite licence comprising that and any other licence under this section which the Council may grant to the person.

(4B) A licence under this section granted to a person who is not a licensed conveyancer ceases to have effect if the person becomes a licensed conveyancer.”

(6) In subsection (9)—

(a) in the opening words, after “respect to” insert “persons who apply for, or hold, an advocacy, litigation or probate licence and”;

(b) in paragraph (c), for “licensed conveyancer” substitute “person”;

(c) after paragraph (d) insert—

“(da) any case of an individual who describes himself or herself, or holds himself or herself out, as a licensed CLC practitioner without holding a licence in force under this section;”;

(d) in the words following paragraph (f), after “respect to” insert “persons who apply for, or hold, a licence under Part 2 of the Act of 1985 and”.

(7) After subsection (9) insert—

“(9A) The modifications mentioned in subsection (9) may differ depending on whether the person applying for, or holding, an advocacy, litigation or probate licence is or is not a licensed conveyancer.

(9B) Subsection (9) does not apply to section 34 of the Act of 1985 (modification of existing enactments relating to conveyancing etc).”

(8) After subsection (10) insert—

“(11) In this section—

“advocacy licence” means a licence issued under this section by which the Council authorises the person concerned to exercise a right of audience;

“CLC practitioner services” has the same meaning as in section 32B of the Act of 1985;

“licensed CLC practitioner” means a person, other than a licensed conveyancer, who holds a licence under this section;

“litigation licence” means a licence issued under this section by which the Council authorises the person concerned to carry on activities which constitute the conduct of litigation;

“the practice of a licensed CLC practitioner” means the provision by a person, as the holder of a licence under this section, of CLC practitioner services in accordance with the licence; and

“probate licence” means a licence issued under this section by which the Council authorises the person concerned to carry on activities that constitute probate activities.”

(9) In the italic heading preceding section 53, after “conveyancers” insert “and licensed CLC practitioners”.

25: After Clause 84, insert the following new Clause—

“CLC practitioner services: consequential amendments

Schedule (CLC practitioner services: consequential amendments) contains consequential amendments relating to sections (CLC practitioner services bodies) and (Licensed CLC practitioners).”

26: After Clause 84, insert the following new Clause—

“The Council for Licensed Conveyancers: other amendments

Schedule (The Council for Licensed Conveyancers: other amendments) contains other amendments relating to the Council for Licensed Conveyancers.”

Amendments 24 to 26 agreed.

Clause 88: Reduction in regulation of providers of social work services

Amendment 27

Moved by *Lord Wallace of Saltaire*

27: Clause 88, page 73, line 27, at end insert—

“section 30A(6)(f);”

Amendment 27 agreed.

Clause 103: Exercise of regulatory functions: economic growth

Amendment 28

Moved by *Baroness Hayter of Kentish Town*

28: Clause 103, page 81, line 41, at end insert—

“() This section does not apply to the following—

(a) Professional Standards Authority,

(b) Human Fertilisation and Embryology Authority, and

(c) any persons exercising a regulatory function with respect to health and care service that the Secretary of State specifies by order.

() An order under this section must be made by statutory instrument.

() A statutory instrument containing an order under this section may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.”

Baroness Hayter of Kentish Town: My Lords, with the leave of the House I will move Amendment 28, which was tabled by my noble friend Lord Hunt of Kings Heath. Our concern is about the impact of the economic growth clauses on these health regulatory bodies and the risk of a negative impact on their overriding responsibility to protect the public. On Report, the Minister denied that that would happen and stated that the economic growth duty would sit alongside the other factors that a regulator must consider. However, “sitting alongside” suggests that it has some—or even the same—weighting and therefore cannot be ignored. The Minister also quoted the draft guidance, but the guidance adds to our concern. It states:

“The growth duty does not automatically take precedence over or supplant existing duties held by regulators”.

The term “not automatically” implies that it is entirely possible that it will take precedence, and that must put the protection of the public at risk.

[BARONESS HAYTER OF KENTISH TOWN]

The two health regulators, the Professional Standards Authority and the Human Fertilisation and Embryology Authority, were debated on Report. They are the subject of Amendment 28. My noble Friend Lord Hunt questioned whether the Professional Standards Authority is indeed a regulator, given that it oversees nine statutory regulators, including the GMC, but is not itself a regulator. We say that there is no need for it to be covered in the Bill. Can the Minister confirm that the Government do not consider that the PSA is covered by the economic growth clauses because it is not such a regulator?

The HFEA performs a crucial and difficult task. We worry that the economic growth duty could make its task even more challenging. On 24 February this House had an excellent debate on mitochondrial donation and agreed the regulations. However, we did so only on the basis that the HFEA's regulatory processes were robust. The HFEA—which, as we know, is highly respected as a model for the regulation of fertility and embryology treatments and research—has acknowledged on its website that it is not an economic regulator. Perhaps the Minister will confirm that that is so. However, I hope he will go further and address our concern that any growth duty could impact on the HFEA's ability to regulate effectively. There is no requirement in the HFE Act to consider growth, thus the new duty could upset the delicate balance on embryo research which has served this country well.

At the centre of the balance is a settlement between science and society which involves a clear set of rules that enable scientists and clinicians to experiment while maintaining public confidence. The existing regime has enabled growth. Surely it is no accident that the UK is the first country in the world to allow mitochondrial donation; it is a by-product of a thriving bioscience sector combined with intelligent regulation. Good rules, flexibly applied, can foster growth. Ironically, the growth duty could upset that balance and even hinder growth in the sector. It risks HFEA decisions being judicially reviewed. For example, those who are against embryo research might argue that the HFEA will favour research because of the growth duty and challenge it on that basis; science-based companies might argue that if it fails to consider growth, it will be failing the growth duty.

I have some questions for the Minister. Do the Government accept that our bioscience sector has thrived and that HFEA regulation has contributed to that success? If so, what is the point of making the growth duty apply to the HFEA? Can the HFEA decide to ignore the growth duty if it is inappropriate in particular cases, for example in respect of patient safety or for new treatments such as mitochondrial donation? Can the Minister assure the House that the HFEA will not be more likely to be judicially reviewed because of the growth duty? Will statutory guidance make this clear so that the HFEA can refer to such guidance if challenged in court? Will the Government commit to exempt the HFEA from the regulation?

Perhaps I may also mention the relationship between the economic growth duty and the EHRC, an issue that has featured not only in this Bill but in the Small Business, Enterprise and Employment Bill. The Minister will be aware of the argument that the EHRC enjoys

an A status as a national human rights institution. It is therefore right that the Government should always be crystal clear that it is not appropriate to apply general regulations to the EHRC. The A status is awarded by the UN International Coordinating Committee, which regularly reviews the EHRC's compliance with the Paris principles, which require the EHRC to be independent. We have to avoid the perception—or the reality—that there is interference in the commission's ability to perform its functions, and ensure that it is always independent. If that independence were jeopardised, it would jeopardise the A status which is vital to the UK's international standing.

Last night, in response to these sorts of arguments in this House, the Minister, the noble Baroness, Lady Neville-Rolfe, agreed to look again at provisions regarding the EHRC in the Small Business, Enterprise and Employment Bill. Will the Minister agree to do the same thing with these two regulators in this Bill? I beg to move.

The Earl of Lindsay (Con): My Lords, I speak to the amendment moved by the noble Baroness, Lady Hayter, from my perspective as a member of advisory bodies that advised the previous Government on better regulation—the Better Regulation Commission and the Risk and Regulation Advisory Council. I am also a member of a body that advises this Government on regulation—the Better Regulation Strategy Group.

I say immediately that if the growth duty compelled either the PSA or the HFEA, or indeed any other regulator, to pursue growth at the expense of undermining the protection of sensitive sectors or sensitive activities, I would have sympathy with this amendment. However, that is not the case. The growth duty does not compel the HFEA or other regulators, as suggested in the amendment, to pursue growth at the expense of undermining protections in the area that they regulate. What it does do is require regulators to consider the economic impact and any unnecessary, disproportionate or excessive bureaucratic burden that they might be imposing on those whom they regulate when carrying out their regulatory processes, producing guidance and so forth.

From my experience of better regulation, better regulators and better enforcement of, or compliance with, regulation, I can see absolutely no reason why the HFEA cannot consider the burden it is imposing on the businesses and organisations it regulates while continuing to ensure that patient protection remains its primary objective.

The growth duty is not a duty to achieve or pursue economic growth. Therefore, it is not a duty that would require the HFEA to drive growth in the fertility sector, for instance. Nor does it dictate that a regulator must attach a particular weight to growth. Therefore, the HFEA, or any other regulator obliged to have regard to the business and bureaucratic experience of being regulated, may reasonably decide that it will attach little or no weight to business factors in relation to a particular decision and that it must attach more weight to its other duties. In the HFEA's case, prominent among those other duties would be patient safety. Therefore, the growth duty will not undermine or override regulators' primary responsibilities in delivering protection.

Applying the growth duty to the HFEA will not affect its robustness as a regulator, and it will not affect its ability to protect the public, which was one of the concerns expressed by the noble Baroness. In that sense, the title of the Bill is, I think, misleading, in that the growth duty is more about better regulation than deregulation. It does not loosen regulation; nor does it remove any regulatory duties or responsibilities. Rather, it enables their delivery and enforcement, when and where appropriate, to be more sensitive and more user-friendly.

Also of relevance to this amendment is the fact that the HFEA is already within the scope of another of the better enforcement programme measures—namely, the Regulators' Code—as it was with its predecessor, the Regulators' Compliance Code. The Regulators' Code is a clearly defined, simple and principles-based framework of good practice for regulators in engaging with those whom they regulate. To my thinking, the HFEA would apply the growth duty in a way that complements the existing requirement to which it is already subject through the Regulators' Code. More importantly, it would, and can, do so without compromising its rigour as a regulator.

I can understand why exceptions might be made in requiring regulators to adopt this duty where it is an irrelevance to the way they regulate or to the areas they regulate, but I cannot see any sense in exempting the HFEA from the growth duty.

8.15 pm

Lord Wallace of Saltaire: My Lords, on Report I committed to giving further consideration to whether the Professional Standards Authority, the PSA, and the Human Fertilisation and Embryology Authority, the HFEA, should be within the scope of the growth duty—that is, whether they should be required, in the exercise of their regulatory functions, to have regard to the desirability of promoting economic growth.

Since Report, officials from the Department for Business, Innovation and Skills have met with the Department of Health and the PSA to explore whether the functions carried out by the PSA meet the definition of “regulatory function” at Clause 106 of the Deregulation Bill. Officials have also considered the nature of the PSA's regulatory role as oversight body for the nine statutory regulators of health and social care professionals.

Following those discussions, the Government have concluded that, while the PSA exercises functions that fall within the definition of “regulatory function” as per the Deregulation Bill, its specific role means that the PSA's regulatory functions are far removed from individual businesses. The PSA would have limited economic impact on business even if it were to apply the growth duty. In the course of taking this Bill through the House and on a number of other occasions, I have learnt to respect the immense diversity of regulatory functions and regulatory bodies, and that is one of the things that the very helpful and positive speech of the noble Earl, Lord Lindsay, took us a little further into. Anything that attempts to apply an overview to the vast mass of regulatory bodies is likely to be wrong. The Government therefore do not currently propose to bring the PSA in scope of the duty but will review this decision in the future should the PSA's regulatory role change.

Moving on to the HFEA, I start by saying that the Government understand that there are aspects of the HFEA's role that are ethically sensitive and unique, as we have recently debated in this House. Therefore, perhaps I may offer a number of preliminary reassurances and commitments to noble Lords, which I hope will assure the Opposition Front Bench. I should say that we had an extremely positive and constructive discussion with the noble Lord, Lord Hunt of Kings Heath, and others earlier in the week.

The growth duty is not a duty that would require the HFEA to drive the growth of one of the industries that it regulates—for example, the fertility sector—and it is not a duty to achieve or pursue economic growth at the expense of patient protections, such as those involved in the sensitive sectors regulated by the HFEA, as the noble Earl, Lord Lindsay, has already set out.

I take this opportunity to repeat once again that the growth duty will not impede the independence of regulators and will give them discretion in how to apply the duty. It is certainly not the Government's intention that the growth duty should weaken the HFEA's regulatory role. I also assure noble Lords—especially the noble Lord, Lord Tunnicliffe, who is not here at the moment but has had helpful meetings with a number of Ministers to discuss this policy—that the duty is about reducing, for example, the regulatory burden of bureaucracy on business. It is not a duty that loosens or undermines important duties of protection. Statutory duties concerning the protection of vulnerable women and men in seeking help in this sector remain of fundamental importance.

The duty requires regulators to have a regard to the desirability of promoting economic growth among those they regulate when they carry out regulatory processes and make regulatory decisions—for example, writing guidance, planning or changing intervention strategies, designing or revising processes, and carrying out inspections of those who are regulated.

The Government commit to continuing to work with regulators, including the HFEA, to ensure that the statutory guidance is fit for purpose, robust and principles-based to assist them in avoiding the risks of challenge. We are all aware of the problem of judicial review and that the HFEA has already been subject to a number of challenges via judicial review. We will therefore make particular efforts to ensure that the guidance is as clear as possible. It will be clear that regulators can have regard to the growth duty, balance it against their other statutory duties and decide not to afford any weight to growth where it is not appropriate or relevant.

I can also give noble Lords the commitment to publish a revised version of the guidance on GOV.UK before or at the time the guidance is laid in draft before Parliament. I should point out that the Government commit also to lay the draft guidance and the draft order, listing the functions to which the duty will apply, before Parliament at the same time for informed debate. Both these, as noble Lords are aware, will be subject to the affirmative resolution in both Houses. There will be continuing engagement with stakeholders to help regulators consider how the duty can be applied, which we hope will help regulators to decide what

[LORD WALLACE OF SALTAIRE]
weight, if any, they should apportion to the growth duty when considering it alongside their protection duties.

Since the Report stage debate, BIS officials have met with the HFEA and the Department of Health to discuss how the growth duty might apply to their specific regulatory role. I am grateful to my noble friend Lord Howe for his commitment that the two departments should continue working together and with the HFEA to address any concerns on specific issues as we move forward. I know that some strong concerns were raised on Report about the HFEA's role in regulating some of the extremely high fees being charged by some fertility clinics. The noble Lord, Lord Winston, talked of a lady, approaching her forties, who went to a clinic in London and was quoted the extremely large sum of £11,000 for three months of fertility treatment.

Having explored the powers that the HFEA has as a non-economic regulator, we found that it has no power to regulate the prices charged in IVF clinics. I understand that the HFEA does want to do more. It has recently decided to provide patients with a feedback mechanism on its website where patients can say whether the costs they actually paid were as originally advertised. I know from discussions with the HFEA that it recognises that costs are a key concern for many patients. However, at present it can only act within its powers. I want to assure the noble Lords, Lord Hunt and Lord Winston, and noble Lords here today, that the Government will work with the Department of Health to explore further the matters raised.

As I said, officials from BIS and the Department of Health have met with the HFEA to consider their statutory regulatory functions which are taken from the Human Fertilisation and Embryology Acts 1990 and 2008, and other legislation. It is the Government's view that the HFEA could have regard to growth when exercising these regulatory functions in a way that would not weaken its regulatory role. It could apply to the HFEA in its general course of operation, such as licensing, inspections or the information that centres are required to provide for them. For example, in the HFEA's overall licensing and inspection of clinics, if it decided to implement a new licensing process, the growth duty requires a consideration of the importance of exercising such regulatory functions in a way which ensures that regulatory action is taken only when it is needed and that any action taken is proportionate. This would encourage the HFEA to consider the impact that this change may have on those it regulates.

The HFEA, as an expert in its respective and expanding field, will decide what weight, if any, to afford growth as part of its decision-making process in each case. In some circumstances it may be appropriate that the HFEA, in making a particular decision, has regard to growth, but makes a reasonable decision not to give it any weight in its decision-making. For example, while exercising its licensing and inspection functions the HFEA may find that a clinic's ability to provide a safe service was in question. The clinic may have breached the Human Fertilisation and Embryology Act 1990, its licence conditions or the HFEA's code of practice to the extent that it is at risk of the suspension of its

licence or even having its licence revoked. In this circumstance, where patient safety is clearly an issue, the HFEA may, in considering the facts before it and weighing up its various statutory duties, make a reasonable decision not to apportion any weight to growth in considering whether to continue to license or close the clinic.

It may also be helpful to draw on an example from the pharmaceutical sector to further illustrate the type of mischief that the growth duty seeks to resolve. A pharmaceutical business used an alcohol spray product in bottles which had certification to say it was safe to use for three months. However, the inspector told the business that once opened, it must throw out bottles after 24 hours. Despite the business pointing out the certificate and the three-month agreed safe lifespan, the inspector refused to read the material and imposed the requirement that the company throw out the spray every 24 hours. This clearly placed an unnecessary financial burden on the business, due to the cost of the product. It could no longer afford to use the product or manufacture a particular pharmaceutical product. The growth duty would have required the inspector to have regard to the economic impact of its decision on the business. It would also have ensured that regulatory action was taken only when needed and that the action taken was proportionate. In neither of those cases would the issue of safety have been jeopardised in any way.

The Government are committed to creating a positive business environment right across the economy and applying a growth duty to regulators across a broad range of sectors that will contribute to this. It is, thus, the Government's view that the HFEA should continue to be included within the scope of the growth duty. I hope that I have clarified the scope and intent of the duty and provided the necessary reassurances on this front.

Finally, in addition, to excluding the PSA and HFEA on the face of the Bill from the scope of the growth duty, the amendment seeks to give the Secretary of State the power to list by order,

"any persons exercising a regulatory function with respect to health and care service",

and in that order to exclude them from the scope of the growth duty.

The Department of Health feels that excluding health regulators from the growth duty would be at odds with other departments and inconsistent with the Government's intent. I hope that I have provided the assurances that the Opposition and others were looking for in this complex area, and I hope that that will enable the noble Baroness to withdraw the amendment.

Baroness Hayter of Kentish Town: I thank the Minister for a very thoughtful response, and for all the work and meetings that have clearly taken place. I particularly welcome the fact, if I have his words right, that the Government do not propose to bring the PSA into scope.

Turning to the HFEA, funnily enough I agree with virtually everything that the noble Earl, Lord Lindsay, says, except that I do not agree that it is against the amendment in front of us. I think that he is arguing for better regulation and for not putting unnecessary

burdens on those being regulated, be they hospitals or laboratories. All the talk about better regulation, not having undue costs and not throwing away bottles after 24 hours is, to me, better regulation and not the same as the growth duty. I think that we are not very far away from that.

I welcome very much the recognition by the Minister that the HFEA is not an economic regulator, his words that it will not be required to drive or pursue economic growth, his willingness to continue this discussion and to use new guidance to try to help avoid the risk of challenge, and his words that the HFEA will decide for itself not to afford that duty in certain cases. We are probably fairly close on this, and the discussions and the new guidance will be helpful. On that basis, I beg leave to withdraw the amendment.

Amendment 28 withdrawn.

Clause 109: Extent

Amendments 29 and 30

Moved by Lord Wallace of Saltaire

29: Clause 109, page 84, line 28, leave out “Paragraph 39 of Schedule 21 extends” and insert “Paragraphs 4, 31(b) and (c), 32(2), 32(4) so far as relating to paragraphs 9 and 68 of Schedule 13 to the Merchant Shipping Act 1995, 32(5) and (6) and 39 of Schedule 21 extend”

30: Clause 109, page 84, line 30, after “paragraphs” insert “5,”

Amendments 29 and 30 agreed.

Clause 110: Commencement

Amendments 31 to 35

Moved by Lord Wallace of Saltaire

31: Clause 110, page 85, line 3, leave out paragraph (c)

32: Clause 110, page 85, line 45, at end insert—

“(5A) The following provisions come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint—

- (a) sections (CLC practitioner services bodies) and (Licensed CLC practitioners);
- (b) section (CLC practitioner services: consequential amendments) and Schedule (CLC practitioner services: consequential amendments);
- (c) section (The Council for Licensed Conveyancers: other amendments) and Schedule (The Council for Licensed Conveyancers: other amendments).”

33: Clause 110, page 86, line 1, after “(5)” insert “and (5A)”

34: Clause 110, page 86, line 12, at end insert—

“(8A) The Lord Chancellor may by order made by statutory instrument make such transitional, transitory or saving provision as the Lord Chancellor considers appropriate in connection with the coming into force of sections (CLC practitioner services bodies) to (The Council for Licensed Conveyancers: other amendments) and Schedules (CLC practitioner services: consequential amendments) and (The Council for Licensed Conveyancers: other amendments).”

35: Clause 110, page 86, line 13, after “(8)” insert “and (8A)”

Amendments 31 to 35 agreed.

Schedule 12: Household waste: London

Amendment 36 not moved.

Schedule 13: Other measures relating to animals, food and the environment

Amendments 37 to 40

Moved by Lord Wallace of Saltaire

37: Schedule 13, page 183, line 41, leave out “subsections (2) and (3)” and insert “subsection (2)”

38: Schedule 13, page 183, line 41, at end insert—

“in subsection (2B), omit paragraph (a);

“in subsection (3), omit “(ba),”;

39: Schedule 13, page 185, line 39, leave out sub-paragraph (29) and insert—

“(29) If paragraph 4 comes into force before the coming into force of the repeal of the Audit Commission Act 1998 by section 1(2) of the Local Audit and Accountability Act 2014, Schedule 2 to the Act of 1998 is to have effect (until the repeal comes into force) as if in paragraph 1, paragraph (ma) were omitted.

40: Schedule 13, page 186, line 14, at end insert—

“() In the Energy Act 2013, in Part 3 of Schedule 9, in the definition of “local authority” in paragraph 14(3), omit paragraph (b).

“() In the Local Audit and Accountability Act 2014, in Schedule 2, omit paragraph 25.”

Amendments 37 to 40 agreed.

Amendments 41 and 42

Moved by Lord Wallace of Saltaire

41: After Schedule 18, insert the following new Schedule—

“*CLC practitioner services: consequential amendments*

Administration of Justice Act 1985 (c. 61)

1 The Administration of Justice Act 1985 is amended as follows.

2 (1) In section 16 (conditional licences), subsection (1) is amended as follows.

(2) For paragraph (b) substitute—

“(b) when conditions under this section have been imposed on a licence under this Part previously issued to him;

(ba) when conditions under paragraph 5 of Schedule 8 to the Courts and Legal Services Act 1990 have been imposed on a licence under section 53 of that Act previously issued to him;”.

(3) In paragraph (c), after “Part” insert “or a licence in force under section 53 of the Courts and Legal Services Act 1990”.

(4) In paragraph (ca), after “24A” insert “(including that section as applied by section 53 of the Courts and Legal Services Act 1990)”.

(5) In paragraph (d), after “26” insert “(including that section as applied by section 53 of the Courts and Legal Services Act 1990)”.

(6) In paragraph (ea), after “22” insert “(including that section as applied by section 53 of the Courts and Legal Services Act 1990)”.

3 (1) Section 26 (proceedings in disciplinary cases) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), after “licence” insert “under this Part”;

(b) in paragraph (b), for “a licence under this Part” substitute “any relevant licence”;

(c) in paragraph (c), after “licence” insert “under this Part”.

(3) After subsection (8) insert—

“(9) In this section “relevant licence” means—

- (a) a licence under this Part, or
- (b) a licence under section 53 of the Courts and Legal Services Act 1990.”

4 (1) Section 28 (revocation of licence on grounds of fraud or error) is amended as follows.

(2) In subsection (1)—

- (a) after “a licence” insert “under this Part”;
- (b) for “the licence” substitute “all of the relevant licences held by that person”.

(3) For subsection (2) substitute—

“(2) Where a person has had any relevant licence which was held by him revoked because of fraud on that person’s part, the person may not be issued with a licence under this Part except on the advice of the Committee given to the Council as the result of an application made by the person to the Committee.”

(4) In subsection (3), for “a licence under this Part” substitute “any relevant licence”.

(5) After subsection (6) insert—

“(7) In this section “relevant licence” has the meaning given by section 26.”

5 (1) Section 33A (administration of oaths by licensed conveyancers) is amended as follows.

(2) In the heading, after “conveyancers” insert “or licensed CLC practitioners”.

(3) In the section, after “conveyancers” insert “or licensed CLC practitioners”.

6 (1) Section 34 (modification of existing enactments relating to conveyancing etc) is amended as follows.

(2) In subsection (2), after “a recognised body” insert “which is a conveyancing services body”.

(3) In subsection (2), after “conveyancer or” (in the second place it occurs) insert “such a”.

(4) In subsection (3), after “body” insert “which is a conveyancing services body”.

(5) After subsection (3) insert—

“(4) In this section “conveyancing services body” has the meaning given by section 32A.”

7 In section 39 (interpretation of Part 2), in subsection (1), at the appropriate place insert—

““licensed CLC practitioner” means a person, other than a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990;”.

8 In Schedule 3 (the Council for Licensed Conveyancers: supplementary provisions), in paragraph 2 (constitution of the Council), in sub-paragraph (1)(a)—

- (a) omit the “or” at the end of sub-paragraph (i);
- (b) after sub-paragraph (i) insert—
“(ia) licensed CLC practitioners; or”.

9 (1) Schedule 6 (bodies recognised under section 32: supplementary provisions) is amended as follows.

(2) In paragraph 3 (preliminary investigation by the Investigating Committee etc)—

- (a) omit the “or” at the end of sub-paragraph (1)(a)(ii);
- (b) after sub-paragraph (1)(aa) insert—

“(aaa) it is alleged that a manager or employee of a recognised body who is not a licensed CLC practitioner has failed to comply with any rules applicable to him by virtue of section 32; or”.

(3) In paragraph 3A (orders made by the Investigating Committee), in sub-paragraph (1)(b)—

- (a) after “3(1)(aa)” insert “or (aaa)”;
- (b) for “that paragraph” substitute “paragraph 3(1)(aa) or (aaa) (as the case may be)”.

(4) In paragraph 4 (orders made by the Discipline and Appeals Committee), in sub-paragraph (2A)—

- (a) after “3(1)(aa)” insert “or (aaa)”;
- (b) for “sub-paragraph (ii) of that paragraph” substitute “paragraph 3(1)(aa) or (aaa) (as the case may be)”.

(5) In paragraph 14 (examination of files), in sub-paragraph (1), after “(aa)” insert “, (aaa)”.

Courts and Legal Services Act 1990 (c. 41)

10 The Courts and Legal Services Act 1990 is amended as follows.

11 In section 75 (judges etc barred from legal practice), in paragraph (c), for “or licensed conveyancer” substitute “, licensed conveyancer or licensed CLC practitioner”.

12 In section 119 (interpretation), in subsection (1), at the appropriate place insert—

““licensed CLC practitioner” has the meaning given in section 53;”.

13 (1) Schedule 8 (licensed conveyancers) is amended as follows.

(2) In the heading, after “conveyancers” insert “and licensed CLC practitioners”.

(3) In paragraph 1 (general)—

- (a) for the definition of “advocacy licence” substitute—
““advocacy licence”, “litigation licence” and “probate licence” have the meaning given by section 53;”;
- (b) omit the definitions of—
 - (i) “litigation licence”, and
 - (ii) “probate licence”.

(4) In paragraph 4 (issue of licences), in sub-paragraph (3), for the words from “with respect” to “as they” substitute “with respect to—

- (a) any application under paragraph 3 for an advocacy licence and any advocacy licence in force under section 53;
- (b) any application under paragraph 3 for a litigation licence and any litigation licence in force under section 53; and
- (c) any application under paragraph 3 for a probate licence and any probate licence in force under section 53 (as the case may be),

as they”.

(5) In paragraph 5 (conditional licences)—

- (a) for sub-paragraph (1)(b) substitute—
“(b) when conditions under this paragraph have been imposed on an advocacy, litigation or probate licence previously issued to him;
- (ba) when conditions under section 16 of the Act of 1985 have been imposed on a licence under Part 2 of the Act of 1985 previously issued to him;”;
- (b) in sub-paragraph (1)(c), for “a licence of that kind” substitute “an advocacy, litigation or probate licence or a licence under Part 2 of the Act of 1985”;

(c) in sub-paragraph (1)(d)—

- (i) after “1985” insert “(including section 24A(1) as applied by section 53)”;
- (ii) after “that Act” insert “(including section 26(1) as applied by section 53)”;

(d) in sub-paragraph (6), omit the “or” after paragraph (a);

(e) in sub-paragraph (6)(b), at the beginning insert “in the case of an applicant who is a licensed conveyancer;”;

(f) after sub-paragraph (6)(b) insert “; or

(c) for requiring the applicant to take any specified steps that will, in the opinion of the Council, be conducive to his carrying on an efficient practice as a licensed CLC practitioner;”;

(g) in sub-paragraph (6), after “paragraph (b)” insert “or (c)”.

(6) After paragraph 6 insert—

Register of licensed CLC practitioners

6A (1) The Council must establish and maintain, in such form as the Council may determine, a register containing the names and places of business of all persons who for the time being hold an advocacy, litigation or probate licence and are not licensed conveyancers.

(2) The Council may make rules specifying the further information, including information about disciplinary measures taken, to be recorded in the register in relation to a person.

(3) The Council must cause the appropriate entries and deletions to be made in the register on the issue and termination of advocacy, litigation and probate licences; and where any licence held by a person is for the time being suspended by virtue of any provision of Part 2 of the Act of 1985 as applied by this Act the Council must cause that fact to be noted in the register against that person's name.

(4) Any change in a licensed CLC practitioner's place or places of business must be notified by that person to the Council within the period of fourteen days beginning with the date on which the change takes effect.

(5) The Council must provide facilities for making the information contained in the entries in the register available for inspection in visible and legible form by any person during office hours and without payment.

(6) A certificate signed by an officer of the Council appointed for the purpose and stating—

- (a) that any person does or does not, or did or did not at any time, hold an advocacy, litigation or probate licence, or
- (b) that any licence held by any person is or was at any time either free of conditions or subject to any particular conditions,

is, unless the contrary is proved, evidence of the facts stated in the certificate; and a certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved."

(7) For paragraph 8 and the cross-heading preceding it substitute—

Effect of suspension or revocation

8 Where a relevant licence ceases to be in force because of—

- (a) a direction under section 24(5) of the Act of 1985, or
 - (b) an order under section 26(2)(a) or (c) of the Act of 1985,
- any other relevant licence in force with respect to that person at the time shall cease to have effect to the same extent as the licence in question."

(8) Omit paragraph 9 (removal of disqualification from holding an advocacy, litigation or probate licence).

(9) Omit paragraph 10 (revocation on grounds of error or fraud).

(10) In paragraph 21 (power to examine files)—

- (a) in sub-paragraph (1)(a), after "conveyancer" insert "or licensed CLC practitioner";
- (b) in sub-paragraph (1), for "the licensed conveyancer" (in both places where it occurs) substitute "the person complained of".

(11) In paragraph 22 (interest on clients' money), after "conveyancer" insert "or licensed CLC practitioner".

Legal Services Act 2007 (c. 29)

14 The Legal Services Act 2007 is amended as follows.

15 (1) Section 104 (prevention of regulatory conflict: accounts rules) is amended as follows.

(2) In subsection (2), after "conveyancer" insert "or licensed CLC practitioner".

(3) After subsection (2) insert—

"(3) In this section "licensed CLC practitioner" means a person, other than a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990."

16 (1) In Schedule 5 (authorised persons), paragraph 11 (rights during transitional period: licensed conveyancers) is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) During the transitional period every individual, not being a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990 is deemed to be authorised by the Council to administer oaths."

(3) In sub-paragraph (2), after "(1)" insert "or (1A)".

(4) In sub-paragraph (3), in the opening words—

(a) after "and every" insert "conveyancing services";

(b) after "provide conveyancing" insert "or other".

(5) After sub-paragraph (3) insert—

"(3A) During that period, every CLC practitioner services body recognised under section 32 of the Administration of Justice Act 1985 is deemed to be authorised by the Council to administer oaths."

(6) In sub-paragraph (4), after "(3)" insert "or (3A)".

(7) For sub-paragraph (5) substitute—

"(5) In this paragraph—

"CLC practitioner services body" has the meaning given by section 32B of the Administration of Justice Act 1985;

"conveyancing partnership" means a partnership at least some of the members of which are licensed conveyancers, but does not include a CLC practitioner services body;

"conveyancing services body" has the meaning given by section 32A of the Administration of Justice 1985."

(8) In sub-paragraph (6), after "licence" insert "or a licence under section 53 of the Courts and Legal Services Act 1990".

17 In Schedule 24 (index of defined expressions), at the appropriate places insert—

"CLC practitioner services body"	paragraph 11 of Schedule 5";
"conveyancing services body"	paragraph 11 of Schedule 5";
"licensed CLC practitioner"	section 104(3)".

42: After Schedule 18, insert the following new Schedule—

The Council for Licensed Conveyancers: other amendments

1 The Administration of Justice Act 1985 is amended as follows.

2 (1) Section 15 (issue of licences by the Council for Licensed Conveyancers) is amended as follows.

(2) In subsection (3)(b), for the words from "the period" to "the Council" substitute "the period prescribed under subsection (3A)".

(3) After subsection (3) insert—

"(3A) The Council must by rules prescribe the period that applies for the purposes of subsection (3)(b)."

3 (1) Section 18 (suspension or termination of licences) is amended as follows.

(2) After subsection (2C) insert—

"(2CA) Where the power conferred by paragraph 6(1) or 9(1) of Schedule 5 is exercised in relation to a recognised body by virtue of paragraph 10(1)(a) of Schedule 6, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is a manager of the recognised body.

(2CB) Where the power conferred by paragraph 6(1) or 9(1) of Schedule 5 is exercised in relation to a recognised body by virtue of paragraph 10(1)(d) of Schedule 6, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is—

- (a) a manager of the recognised body, or
- (b) an employee of the recognised body.

(2CC) Where the power conferred by paragraph 3(1) or 8(1) of Schedule 14 to the Legal Services Act 2007 is exercised in relation to a licensed body by virtue of paragraph 1(2)(d) of that Schedule, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is—

- (a) a manager of the licensed body, or

(b) an employee of the licensed body.

(2CD) At the time when the power referred to in subsection (2CA), (2CB) or (2CC) is exercised, the Council may direct that subsection (2CA), (2CB) or (2CC) (as the case may be) is not to apply in relation to a particular licensed conveyancer.

(2CE) The Council may give a direction under subsection (2CD) in relation to a licensed conveyancer only if—

(a) the Council is satisfied that the licensed conveyancer did not fail to comply with the rules applicable to the recognised body by virtue of section 32, or contribute to the body's failure to comply with such rules, in a case where the Council acts by virtue of paragraph 10(1)(a) of Schedule 6,

(b) the Council does not suspect the licensed conveyancer of dishonesty, in a case where the Council acts by virtue of—

- (i) paragraph 10(1)(d) of Schedule 6, or
- (ii) paragraph 1(2)(d) of Schedule 14 to the Legal Services Act 2007,

(c) the Council is satisfied that the licensed conveyancer was not a manager of the recognised body when the conduct providing the basis for the exercise of the power in paragraph 6(1) or 9(1) of Schedule 5 took place, in a case where the Council acts by virtue of paragraph 10(1)(a) of Schedule 6,

(d) the Council is satisfied that the licensed conveyancer was not a manager or employee of the recognised body when the conduct providing the basis for the exercise of the power in paragraph 6(1) or 9(1) of Schedule 5 is suspected of having taken place, in a case where the Council acts by virtue of paragraph 10(1)(d) of Schedule 6, and

(e) the Council is satisfied that the licensed conveyancer was not a manager or employee of the licensed body when the conduct providing the basis for the exercise of the power in paragraph 3(1) or 8(1) of Schedule 14 to the Legal Services Act 2007 is suspected of having taken place, in a case where the Council acts by virtue of paragraph 1(2)(d) of Schedule 14 to that Act.

(2CF) At the time when the power referred to in subsection (2CA), (2CB) or (2CC) is exercised, the Council may direct that such of the licensed conveyancers concerned as are identified in the direction may continue to act in relation to any matter specified in the direction as if their licences had not been suspended by virtue of subsection (2CA), (2CB) or (2CC) (as the case may be), subject to such conditions (if any) as the Council sees fit to impose."

(3) In subsection (2D), after "(2A)" insert ", (2CA), (2CB) or (2CC)".

(4) In subsection (2G), for "High Court" substitute "First-tier Tribunal".

(5) Omit subsection (2H).

4 (1) Section 19 (register of licensed conveyancers) is amended as follows.

(2) After subsection (1) insert—

"(1A) The Council may make rules specifying the further information, including information about disciplinary measures taken, to be recorded in the register in relation to a person."

(3) In subsection (2), omit "accordingly".

5 In section 20 (rules as to professional practice, conduct and discipline), omit subsection (2).

6 (1) Section 24 (preliminary investigation of disciplinary cases) is amended as follows.

(2) In subsection (10), for "High Court" substitute "First-tier Tribunal".

(3) In subsection (11), for "High Court" substitute "First-tier Tribunal".

(4) Omit subsection (12).

7 (1) Section 24A (determination of allegations by the Investigating Committee) is amended as follows.

(2) In subsection (8), for "High Court" substitute "First-tier Tribunal".

(3) In subsection (9), for "High Court" substitute "First-tier Tribunal".

(4) Omit subsection (10).

8 (1) Section 26 (proceedings in disciplinary cases) is amended as follows.

(2) For subsection (7) substitute—

"(7) Where the Discipline and Appeals Committee make an order by virtue of subsection (1)—

- (a) the person against whom the order is made, or
- (b) the Council,

may appeal to the First-tier Tribunal, and on any such appeal the First-tier Tribunal may make such order as it thinks fit."

(3) In subsection (7A), for "High Court" (in both places where it occurs) substitute "First-tier Tribunal".

(4) Omit subsection (8).

9 In Schedule 3 (the Council for Licensed Conveyancers: supplementary provisions), in paragraph 4 (appointment of persons to Council), in sub-paragraph (2), omit "by one".

10 (1) Schedule 6 (bodies recognised under section 32: supplementary provisions) is amended as follows.

(2) In paragraph 3A (orders made by the Investigating Committee)—

(a) in sub-paragraph (8), for "High Court" substitute "First-tier Tribunal";

(b) in sub-paragraph (9), for "High Court" substitute "First-tier Tribunal";

(c) omit sub-paragraph (10).

(3) In paragraph 6 (appeals against orders of the Discipline and Appeals Committee)—

(a) for sub-paragraph (1) substitute—

"(1) Where the Committee make an order by virtue of paragraph 4(1) or (2A) or 5(1)—

- (a) the person as regards whom the order is made, or
- (b) the Council,

may appeal to the First-tier Tribunal, and on any such appeal the First-tier Tribunal may make such order as it thinks fit.;"

(b) in sub-paragraph (1A), for "High Court" (in both places where it occurs) substitute "First-tier Tribunal";

(c) omit sub-paragraph (2)."

Amendments 41 and 42 agreed.

Schedule 19: Poisons and explosives precursors

Amendment 43

Moved by Lord Wallace of Saltaire

43: Schedule 19, page 216, line 14, leave out "level 5 on the standard scale" and insert "the statutory maximum"

Amendment 43 agreed.

Schedule 21: Legislation no longer of practical use

Amendments 44 and 45

Moved by Lord Wallace of Saltaire

44: Schedule 21, page 234, line 18, leave out from "1983," to end of line 20

45: Schedule 21, page 234, line 23, leave out sub-paragraph (3)

Amendments 44 and 45 agreed.

8.30 pm

Motion

Moved by Lord Wallace of Saltaire

That the Bill do now pass.

Baroness Hayter of Kentish Town: My Lords, I use this opportunity for a brief moment to pay tribute to my noble friend Lord Stevenson, who, from our side, has guided and marshalled our many Front Bench colleagues, including my noble friends Lady Thornton, Lord Tunnicliffe and Lord McKenzie, through what has been called a “Christmas tree Bill”. Of course, we do not think it is quite such a Bill because it is not full of goodies, but I thank my noble friend Lord Stevenson and, I have to say, our brilliant legislative adviser, Muna Abbas; this was her first such Bill. We think that it has ended up a little better than it arrived.

I thank the Minister and his sometimes expanding, sometimes reducing ministerial team. I also thank the other members of the Bill team who have helped negotiate, redraft, debate and discuss throughout the process, including the setting up of a large number of bilateral meetings, some of which have dealt with some very complex issues. They now deserve a very good holiday, so I suggest that before too long we have a general election so that they may have one.

Lord Stoneham of Droxford (LD): My Lords, on behalf of these Benches, I thank my noble friend Lord Wallace for seeing us through this Bill. When we started, we thought that this would be a complete nightmare, but his skill, perseverance and patience have helped that not to be so. I thank also the opposition Benches for their part in seeing this legislation through, and our colleagues in our own office, Giles Derrington and Elizabeth Plummer, who supported us through the business of this Bill.

Lord Wallace of Saltaire: My Lords, this is almost the end of the Gardiner-Wallace double act for this Parliament. The kinder definition of this Bill is “a portmanteau Bill”, I think. I am particularly grateful to the Bill teams for the way in which they have coped with what has unavoidably been a matter of negotiation across Whitehall, dealing with different Whitehall departments, in pursuit of what the noble Earl, Lord Lindsay, would like to call better regulation rather than deregulation.

When I look across the currently empty Benches, I am always conscious that there are those who believe that the only regulations imposed on Britain are imposed by Brussels. Many of our discussions here have been about the necessity of regulation for many different parts of the British economy, British society and British science, and we are going to continue, for the rest of our careers in this Chamber, to discuss many of these issues about risk, regulation, the market and how one balances all those very difficult issues.

There are many others whom one could thank. I almost feel that I should thank the noble Lord, Lord Rooker, for agreeing that, having chaired the pre-legislative scrutiny, he would not take further part in this Bill because he felt that he had had enough. He is far too

sharp otherwise to have missed a number of things that we have been struggling with. It has been a very large Bill. We have managed to repeal or amend a number of early 19th-century Acts and statutory instruments, and we have now come to the end. I am extremely grateful to all those who have co-operated in this, including the Opposition Front Bench and their researchers, as well as our magnificent Bill team.

Bill passed and returned to the Commons with amendments.

Supply and Appropriation (Anticipation and Adjustments) Bill

First Reading

8.34 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Corporation Tax (Northern Ireland) Bill

First Reading

8.35 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015

Motion to Approve

8.36 pm

Moved by Lord Faulks

That the draft order laid before the House on 19 February be approved.

Relevant document: 20th Report from the Joint Committee on Statutory Instruments

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, the purpose of this draft order is to introduce enhanced fees to commence certain proceedings for the recovery of money in the courts of England and Wales. Enhanced fees are fees that are set above the costs of the proceedings to which they relate. The order prescribes a fee of 5% of the value of the claim for all claims with a value of £10,000 or more, up to a maximum of £10,000. It also provides for a discount of 10% for applications initiated electronically.

The order also fixes three fees that are already currently above cost: the fee for an application for a divorce; the fee to fix a hearing of a case allocated to the fast track; and the fee for a multi-track hearing. These fees have come to be at a level above cost due to the adoption of a new mechanism for modelling the way that cases progress through the courts, and a new methodology for apportioning costs to those cases. These were first used to prescribe the court fee changes introduced on 22 April last year.

I reassure noble Lords that these fees are not being increased. But we made it clear, when we responded to the consultation on fee increases to achieve cost recovery, that we could see no justification for reducing any fee in the current financial climate. These fees are therefore being remade at their current levels explicitly using the enhanced fee power. The normal rule for public services is that fee income should cover the full cost of delivering those services. For many years, the civil and family courts have operated on that basis.

Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 provides the Lord Chancellor with a power to prescribe fees above cost. In December 2013, we set out our proposals for using this power in a consultation paper, and on 16 January we published the government response setting out the fee increases that we intended to take forward. The order gives effect to those fee increases.

Why are the Government taking this action and why is it necessary? The principal reason for bringing forward this order is financial: to ensure that the courts are properly funded. The courts fulfil a crucial function in our society. They ensure access to justice for those who need it. This is vital to an effective democracy, helping to maintain social order and an effective and functioning economy. It is critical that these principles are preserved, so that people who need it have ready access to the courts.

A strong economy is a pre-requisite for effective and affordable public services. Noble Lords will be well aware of the state of public finances that this Government inherited, with a growing budget deficit, increased public sector debt and an economy in recession. We made economic recovery our first priority. That required some difficult choices. The action that we have taken is working, and the recovery is now well under way. But further reductions in spending are essential if we are to eliminate the deficit and reduce overall levels of public debt.

There can be no exceptions for the courts. The challenge, as with many other public services, is to do more with less. The Government will invest £375 million over the next five years in the courts on much-needed modernisation. This investment is expected to release long-term, sustainable savings worth over £100 million per annum. There is, however, only so much that can be done through cost-efficiency measures alone. In the current climate, we must also look to those who use the courts to contribute more towards the running of the courts, where they can afford to do so.

We consulted on our proposals and we have taken the time to consider the responses very carefully. The consultation produced some very strong views. We listened and we have decided not to take forward some of our original plans. We are not increasing the fee for a divorce, nor are we taking forward either of the proposals for raising fees for commercial proceedings. This has not, however, changed the financial imperative, and we have set out our further proposals for raising fee income from possession claims and from general applications in civil proceedings.

The measures in this order will, we estimate, generate an additional £120 million per annum in additional income, with every pound collected retained by the

courts. That is a matter specifically provided by Section 180 of the Anti-social Behaviour, Crime and Policing Act. Fee increases will never be welcome or popular. But I am sure that those who choose to litigate in our courts will continue to recognise the outstanding levels of service and excellent value for money we offer. I therefore commend this draft order to the House and I beg to move.

Amendment to the Motion

Moved by Lord Pannick

At end to insert “but that this House regrets that the draft order unfairly and inappropriately increases fees for civil proceedings above costs and so damages access to justice”.

Lord Pannick (CB): My Lords, last week, the Lord Chancellor and Secretary of State for Justice, Mr Grayling, told the Global Law Summit that he is, “incredibly proud of our legal heritage”.

Today, we are debating an order that he has brought forward which will do incredible damage to the legal heritage because it will impede access to justice. As the Minister mentioned, this order will substantially increase the fees that claimants must pay when they start legal proceedings. If you want to sue for between £10,000 and £200,000, you will need to pay an upfront fee of 5% of your claim. To claim £200,000, you will need to find £10,000. That is a 576% increase on the current fee of £1,515.

The Minister is of course correct to say that Parliament approved Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014, which authorises the Lord Chancellor to prescribe fees above the cost of providing the court service to litigants. That is the power that Mr Grayling is now exercising. But is it a fair, reasonable or proportionate exercise of that power? Plainly not. For litigants to have to pay such substantial sums in advance of bringing a legal claim will inevitably, in practice, deny access to the court for many traders, small businesses and people suing for personal injuries.

The Government have suggested that court fees will be a small fraction of the legal expenses which a claimant will incur, but many claimants will not have to pay their legal expenses at the outset of proceedings. They will not have such a substantial sum of money available at the outset of the case, or they may be able to pay these court fees only by doing without competent legal representation. The deterrent effect on litigation will, I think, make it most unlikely that the increased charges will produce the anticipated £120 million which the Government hope to produce by this order.

The order will have further damaging consequences. Unscrupulous debtors will be far less likely to pay up if they suspect that their creditor cannot afford the court fees.

8.45 pm

The Minister mentioned the consultation and the strong views in response. On 19 December 2014, the Lord Chief Justice of England and Wales, the noble and learned Lord, Lord Thomas, responded to the consultation on behalf of the senior judiciary—that is,

himself; the Master of the Rolls, Lord Dyson; the President of the Queen's Bench Division; the President of the Family Division; the Chancellor of the High Court; and the deputy head of civil justice. They all know a thing or two about access to justice and litigation. They explained their "deep concerns" about this dramatic increase in court fees. I cannot recall seeing a letter from the senior judiciary expressed in such scathing terms in response to a consultation about a proposed government policy. The noble and learned Lord, Lord Thomas, said that the Government's impact assessment for these proposals,

"makes some very sweeping and, in our view, unduly complacent assumptions about the likely effect on the volume of court claims issued and access to justice of the proposed fee increases".

The judges added that,

"the research evidence base for these proposals is far too insubstantial for reforms and increases of this level".

The letter said that,

"there are fears that the increase in fees could trigger commercial work moving elsewhere".

On behalf of the Law Society, the Bar Council and other legal bodies, the solicitors Kingsley Napley have sent the Lord Chancellor a letter before claim threatening judicial review proceedings, and rightly so. Section 180 does not alter the Lord Chancellor's legal duty under Section 92 of the Courts Act 2003 to,

"have regard to the principle that access to the courts must not be denied".

The courts will interpret the powers conferred by Section 180 as not intended to authorise regulations which impose an unreasonable or disproportionate barrier to access to the courts.

In his 19th-century *Lives of the Lord Chancellors*, John Campbell said that too many holders of this office are remembered only because they,

"perverted the law, violated the constitution and oppressed the innocent".

Mr Grayling's period of office has been notable only for his attempts to restrict judicial review and human rights; his failure to protect the judiciary against criticism from his colleagues; and the reduction in legal aid to a bare minimum provision. Yesterday, Mr Grayling lost yet another judicial review claim, this one overturning the regulations which authorise legal aid for judicial review cases only after permission has been granted to bring the proceedings. Now for his finale before the general election Mr Grayling is undermining basic access to justice in the courts, by seeking to make money from small businesses which simply want to enforce their contractual rights and from victims of personal injury seeking to obtain compensation from the wrongdoers. That is not a legal heritage of which anyone could be proud.

If you wrap yourself in Magna Carta, as Mr Grayling sought to do last week at the Global Law Summit, you are inevitably and rightly going to invite scorn and ridicule if you then throw cold water over an important part of our legal heritage. I beg to move.

Lord Beecham (Lab): My Lords, last Thursday, my noble friend Lord Howarth asked a Question about the subject of the Order and the Motion of Regret that we are debating tonight. In my follow-up question, I asked why, in the light of the 80% decline in the

number of employment tribunal cases since the imposition of charges—quite contrary to the Government's predictions—we should accept the Government's assurances that there would be little or no effect on access to justice from this measure. The Minister's reply, apart from the mantra which all Ministers are programmed to repeat about the Government's so-called "long-term economic plan", was interesting. He conceded that:

"As a result of a relatively modest fee"—

in employment cases—

"there has been a significant decline in the number of claims brought".—[*Official Report*, 26/2/15; col.1763.]

Perhaps he could tell us just how much money it was predicted would be raised by those fees, and how much has actually been raised. Then perhaps he could explain why increases in fees of up to some 600% in the civil courts, which could not conceivably be described as "relatively modest", will have little or no effect on the number of cases brought there.

How do the Government respond to the withering criticism by the senior judiciary in its response to the initial consultation in February 2014, which described, "the research so far undertaken",

as,

"clearly inadequate to assess the ... consequences ... on the ability of parties to afford access to the courts and on their willingness to do so".

The Government's response to part 2 of the consultation on their proposals, published in January this year, is instructive. At paragraph 38, they noted that:

"A number of respondents ... disagreed with the proposal".

Is it too much to ask the Minister how many? How many did agree with the proposal?

I should note and welcome in parenthesis that, as the Minister has pointed out, the Government did at least change their position on family law and commercial cases. However, the response contains one paragraph that merits a Nobel prize for circularity. Paragraph 46 recognises that,

"some respondents were concerned that the fees bore little resemblance to the cost of proceedings. However, under the powers contained section 180 of the *Anti-social Behaviour, Crime and Policing Act 2014*, court fees are not limited by the cost of proceedings".

So that is all right then.

As we have heard, the Government airily dismiss the suggestion that the proposed fees,

"could lead to difficulties in some people being able to access the courts".

Who, upon what evidence, supports that view? Not the Lord Chief Justice, on behalf of the senior judiciary, who, in his letter of 19 December, which the noble Lord, Lord Pannick, has already mentioned, refers to the two exercises purporting to constitute research into the proposals and which are reflected in what passes for the impact assessment. He draws particular attention to the effect on SMEs and litigants in person. The Lord Chief Justice reiterated that the 2013 research was based on only "18 telephone interviews"—presumably carried out in similar fashion to the cold calls with which we are increasingly and irritatingly familiar. The latest research involved 31 users, of whom all of 12 related to claims for more than £10,000, which is

the level at which the fees are levied at 5%, which amounts, as we have heard, to £10,000 for large claims of £200,000. That represents an exponential increase of something around 600%.

Other bodies have made their strong views known, as the Minister acknowledged and as referred to by the noble Lord, Lord Pannick. The Civil Justice Council, in its response in December, identified,

“a disproportionately adverse effect on some groups e.g. small and medium enterprises, low income individuals ... thereby undermining equality before the law”.

As we heard from the noble Lord, Lord Pannick, an application has been made for a judicial review of the order by nine institutional claimants, equally expressing their great concerns. Eleven different professional organisations draw particular attention to the potential impact on individuals with clinical negligence or personal injury claims; on small unincorporated businesses, where they forecast a drop of 35% in claims; and on SME companies—that is, limited companies—a drop of 49% in claims. They also draw attention to the possible impact on actions for recovery and insolvency cases, which could, ironically, rebound indirectly on the taxpayer.

The leading solicitors firm Fieldfisher, which acts in high-value, usually personal injury and medical negligence claims, supplied an interesting perspective on the implications of the order. I ought to declare an avuncular interest, as my nephew is a tax partner in that firm. It points out that whereas after the Woolf reforms solicitors usually funded disbursements, including court fees, that cost would rise to millions of pounds per annum. Few people could afford a £10,000 payment and most solicitors will be unable to fund their clients' actions. They point to fears of a negative impact on mesothelioma claims, where speed is of the essence. They conclude that the proposal,

“tips the balance further in favour of the Government and corporate interests in whose interests it is to delay, frustrate and deter access to justice and access to compensation. It encourages Defendants to make early low offers before proper investigation of the case and to continue to unreasonably deny liability”—

their split infinitive, not mine. This comes not from a niche, left-wing human rights firm of the kind so abhorrent to the Lord Chancellor, but from one of the City's leading firms, which proclaims itself,

“more than just a European law firm, specialising in providing commercial solutions across industries and sectors”.

Members may also have had sight of three letters sent to the Law Society by three different people seeking to recover, for them, substantial sums and facing under these proposals fee costs of £5,000 in two cases, and between £2,600 and £3,200 in the third, which they simply cannot afford precisely because of the losses incurred which are the subject of their claims. One also has to ask what consideration has been given to the possibility of claimants resorting to alternative methods of dispute resolution at a potentially lower cost to them, with a consequent impact on the income for the Courts Service?

There may be a case for full cost recovery. The Minister, in opening, referred to that as if it were the main point at issue, but of course it is not. The real issue here is the fact that the Government are going for more than full cost recovery. It is perhaps arguable that there may

be some categories of cases where that might be justified, but might the Government be contemplating other such approaches by analogy, for example in relation to criminal cases or to damages in road traffic and personal injury cases, where defendants can already be required to meet the cost of NHS treatment afforded to the claimant? If more than full cost recovery is legitimate in the court area, might it not be argued that to help with the growing cost of the National Health Service and the demands for extra funding, more than full cost recovery from those who injure people who therefore have to undergo NHS treatment should be levied in those areas? Will the Government disavow any such intention, or is it perhaps in their mind to expand this principle of more than full cost recovery to other areas than those that are the subject of these regulations?

Tonight we will doubtless hear from noble and learned Lords, although not too many—there are only about a couple now present in the Chamber—and we look forward to it. They have a lifetime's experience of the operations of the courts and a profound attachment to access to justice. We have already heard from one distinguished practitioner, and I dare say we will hear from two more before the evening ends, also troubled by the potential implications of this ill thought out measure. It is not too late for the Government to pause, reflect upon and reconsider these proposals, even if the order is affirmed today, as undoubtedly it will be. It would surely be appropriate to do so in any event when such a controversial measure comes so close to the end of a Parliament.

I urge the Government, before implementing the order, to commission further work in conjunction with the Civil Justice Council to examine in greater detail the implications of their proposals as presently cast and the impact that is likely to ensue, and to listen with care to the advice of those whose wisdom and experience should guide any decisions with the potential significantly to impact on access to justice, the very cornerstone of our legal system.

9 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, one problem with a Bill that stretches to 186 clauses and 11 schedules and occupies 232 pages of the Queen's printer's copy is that, at least by the time that Clause 180 is reached, this House's scrutiny powers begin to wane. Thus it was that, last year, by passing Section 180 of the Anti-social Behaviour, Crime and Policing Act, the Lord Chancellor was empowered to prescribe by statutory instrument, subject to affirmative resolution, court fees exceeding the cost of doing that for which the fee is charged—enhanced fees, as they are called. That Section 180 power must be reasonably, sensitively and fastidiously used. It is bad enough that the courts should be required to be self-financing at all. The justice system properly exists for the benefit of society and the economy as a whole. There has long been objection to the basic principle of full cost recovery.

To put that aside, the order for enhanced fees goes altogether further. In a real sense, it is selling justice—apparently contrary to Magna Carta, although now sanctioned by Section 180. Small wonder that it is characterised by some as a tax-like payment rather

than a realistic charge for the use of the courts. Under Section 180(6), the enhanced fees,

“must be used to finance an efficient and effective system of courts and tribunals”.

That is small comfort to those who pay enhanced fees. Why, they will not unnaturally ask, should they be subsidising the family courts or whatever other proceedings are brought which do not attract the enhanced fee liability?

That is the first, fundamental, principled objection to the order. It is an objection not just in abstract constitutional terms, but because it must inevitably carry with it reputational consequences. Frankly, it sullies the overall image of British justice, no part of which should be open to criticism as a profit-making enterprise.

The second main objection is in two linked parts. First, to some extent at least, enhanced fees are bound to deter prospective claimants from litigating their claims. The second, necessarily linked, part of the objection is that, to the extent that claims are deterred, enhanced fees will fail in their central objective of raising money. The greater the number of claims deterred, the smaller the additional sum raised by the increases.

I add four footnotes to that objection. First, as explained in the Civil Justice Council’s response in December and the Lord Chief Justice’s letter written on behalf of all the heads of division, those dramatic increases, which, as we have heard, are in some instances over 600%, have to be paid up front and in full and are likely to impact disproportionately on SMEs and litigants in person. Of course, as the Minister observed in an answer at Question Time last week to the noble and learned Lord, Lord Mackay of Clashfern, the heads of division were indeed consulted, but even after modifications were made they continued to voice “deep concerns” about the proposals.

Secondly, as explained in a detailed briefing paper from the Law Society, the Bar Council and various other professional bodies, clinical negligence and personal injury cases, to which the noble Lord, Lord Beecham, referred, are likely to be adversely affected.

Thirdly, contrary to the Government’s bland statement that they are confident that the concerns expressed about the risk of damage to our legal services, and London’s reputation as the leading commercial dispute resolution centre, are misplaced—a bland assurance seen in their January 2015 response to the consultation and in Appendix 2 to the House of Lords Secondary Legislation Scrutiny Committee report—in fact 61% of the 158 people who responded on this issue to the BIICL research which was especially commissioned by the Ministry of Justice suggested that the proposed increase in fees could have a detrimental effect on the English litigation market, with 44 of those consulted considering this to be “highly likely”.

Wisely, following the consultation, the Government abandoned their initial proposal, which was to raise yet higher enhanced fees of up to £20,000 for the issue of the higher value commercial claims in the Rolls Building, on the basis that this would be likely to kill or, at any rate, severely lame the golden goose that has paid the vast sums which this litigation has earned the nation—billions of pounds-worth, a lot of it foreign currency. It must surely follow from that abandonment

that even £10,000 is likely at least to deter some foreign claimants from litigating their claims here or to drive people, if not actually to abandon their claims, at any rate to resort to arbitration or mediation, as the noble Lord, Lord Beecham, also suggested.

With regard to my fourth footnote—I say this in fairness to the Government—unlike certain others, I do not see the employment tribunal fees experience as a directly helpful analogy. No doubt the introduction of those fees, whereas before there were none, has discouraged a number of meritorious claims but I suspect that it has discouraged at least as many unmeritorious claims—speculative claims, which used regularly to be brought and then bought off or settled because, frankly, that was a cheaper option for the defendant employers than successfully resisting them and then being left to bear their own costs, which were quite likely to be very substantially more.

A third and final reason for objecting to these increases is that they are not only intrinsically unfair when levied at this level but, in addition, produce curious and unfair anomalies. An obvious one is that all claims not specifically limited are now to attract the maximum full fee of £10,000. It is true that the Civil Justice Council said that it could see no logical justification for distinguishing between specified and unspecified money claims, and as far as it goes that is right. However, as the Lord Chief Justice’s letter points out, in personal injury cases, for example, it may well be quite impossible to value the claim when it is issued. Similarly, in many of the Rolls Building commercial cases, damages may be a subsidiary consideration. The principal relief being sought may well being an injunction or some other remedy—perhaps an account or something of that character.

My final point is that the Government are now proposing yet further enhanced fees, with a view to raising a further £55 million annually. They propose to do this—it is the subject of the January 2015 consultation document—by raising fees in possession cases and upon applications of one sort or another being made in ordinary civil proceedings. Again, there are compelling arguments against those, summarised in the Civil Justice Council’s response in February to the latest consultation round, but it is not necessary to go into them today.

Today’s Motion is of course one of regret rather than a fatal Motion. For whatever reason, Labour has apparently not been prepared to go that far. However, it will, I hope, help at least to persuade the Government that enough is enough and that really there must be no more use of this enhanced fee power. I suggest that the order is not merely to be regretted but to be deplored.

Lord Marks of Henley-on-Thames (LD): My Lords, I regret that I find it difficult to understand what has made the Ministry of Justice persist with these changes in the face of the well reasoned and overwhelmingly hostile reaction to them. The ministry’s impact assessment was based upon express assumptions, described as “key”, that,

“fee changes will not affect court case volumes”;

that,

“there are no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees”;

and that,

“there are ... no impacts on the legal services used to pursue or defend claims”.

It was those assumptions to which the senior judiciary referred in their letter dated 19 December 2014, to which reference has already been made, which led the Lord Chief Justice to describe the proposals as,

“very sweeping and, in our view, unduly complacent”.

For judges not inclined to overstatement, that is trenchant criticism indeed. The letter was based upon the draft impact statement, which the senior judiciary had seen. Notwithstanding that criticism, the assumptions nevertheless found their way into the final impact statement when it was made on 16 January this year.

When the noble Lord, Lord Howarth, asked a Question of the Minister last Thursday, my noble and learned friend Lord Mackay questioned why these measures had not been introduced with the consent of the heads of division. Cynics, and anyone who had read the letter of 19 December, could be forgiven for the view that the reason why such consent was not sought was that it clearly would have been withheld for the very reason that the assumptions made by the department were unsustainable.

It was not only the Law Society and the Bar Council that prepared a briefing on these proposals. Other professional bodies as disparate as the Association of Personal Injury Lawyers, the Forum of Insurance Lawyers—who, of course, are usually on the other side—the Association of Business Recovery Professionals, and COMBAR, the Commercial Bar Association, joined them in referring to the evidence from individual law firms, to which the noble Lord, Lord Beecham, referred, that:

“Over 200 individual examples provided by law firms show that the total value of cases brought by individuals would be likely to fall by around one-third (35 per cent) under higher court fees. For small and medium-sized companies it would halve (a 49 per cent decrease). This suggests that increased court fees could have a significant impact on access to justice for both individuals and businesses, as fewer could afford to pay the higher rates”—

a point eloquently made by the noble and learned Lord, Lord Brown of Eaton-under-Heywood.

9.15 pm

Even the worst case considered in the Government’s so-called “sensitivity analysis” in their impact statement, which was predicated on their own assumptions turning out to be wrong, posited only a maximum 10% fall in demand. Thus the Government’s assumptions on which the introduction of these new charges is based are flatly contradicted by the evidence obtained by the professional bodies from those most likely to be able to make accurate estimates. I agree with what has been said; it is overwhelmingly likely that these proposals for massive increases in the upfront costs of bringing money claims will deter claimants with good claims from bringing them forward. Like the noble and learned Lord, Lord Brown of Eaton-under-Heywood, I believe that it is a fundamental duty of government to provide citizens with affordable access to the courts to enforce their legal rights, and that these charges will therefore have an adverse effect on access to justice is difficult—indeed, impossible—to deny.

Small and medium-sized companies will be deterred from bringing claims to recover sums due to them because they are unable to afford the substantial upfront fees, often when that inability is brought about by the very debtors that they would wish to pursue. Individuals will be unable to afford to bring claims that they would have otherwise brought, particularly in personal injury cases. A further problem that has been mentioned and which I should have thought was obvious is that the proposals that involve charging the maximum fee to any claimant who cannot specify the value of his claim are completely unfair to personal injury claimants, who often cannot specify the value of their claim when they bring it. Moreover, any decrease in claims numbers will make it far more difficult for small solicitors firms in particular to survive in the current difficult, largely post-legal aid climate, in which they are already struggling.

It also follows from the evidence of a likely drop in claims numbers that the extent of the direct benefit to the Exchequer from these so-called enhanced court fees is likely to turn out to have been substantially overestimated at £120 million. However, that is not the only commercial consequence of getting this wrong; a decrease in claims numbers would have a serious knock-on effect for the revenue of businesses and professionals, of which the Exchequer would ultimately have taken its share.

The Kingsley Napley letter of claim from the Law Society, the Bar Council and seven other professional bodies to which reference has been made challenges the lawfulness of the draft regulations. The letter asserts forcefully that the proposed fees are outside the scope allowed by the enabling provision, which, as has been pointed out, is Section 180 of the Anti-social Behaviour, Crime and Policing Act. That provision permits the Lord Chancellor to raise fees beyond the cost of services only, “to finance an efficient and effective system of courts and tribunals”, whereas these fees are not required for the provision of the courts services because they are already self-financing. The letter also argues that the enabling provision should be construed strictly, particularly having regard to the constitutional prohibition in Magna Carta on selling justice. Secondly, the letter argues that the Secretary of State’s reasoning was irrational; and, thirdly, that there were very real flaws in the consultation process. The letter seeks the revocation by the Secretary of State of the Lord Chancellor’s decision to introduce these fees and threatens judicial review if the changes proceed.

I invite my noble friend the Minister to say to what extent he and his department have yet considered this letter of claim. On reflection, does he not now concede that it is time to think again before the real damage is done before fighting judicial review and attempting to press on with these increases?

Lord Scott of Foscote (CB): My Lords, I had prepared a speech in support of the amendment of my noble friend Lord Pannick. However, having regard to the speeches that your Lordships have already heard from not only the noble Lord, Lord Pannick, but from the noble Lords, Lord Beecham and Lord Marks, and the noble and learned Lord, Lord Brown of Eaton-under-Heywood, I will confine myself to asking four questions of the Minister.

First, does the Minister agree that respect for the rule of law by at least the majority of those living in this country is an essential requirement if this country is to continue to rank as a civilised country in which it is a pleasure and a privilege to live? Secondly, does he also agree that those who for reasons of lack of necessary funds are denied access to justice in our courts cannot expect to have or to retain respect for the rule of law? Thirdly, if the Minister agrees with those two previous questions, which seem to me self-evident, how can he justify increasing the cost of litigation to a level that will deny access to justice to a large number of people? The fourth question arises out of the terms of Section 92(3) of the Courts Act 2003, which states that in setting fee levels,

“the Lord Chancellor must have regard to the principle that access to the courts must not be denied”.

Does the Minister accept that principle? If he does, as I am sure is the case, how does he justify a fee of as much as £10,000 for the commencement of a civil action? If he does not accept that principle, how does he justify his retention as a Minister in the office of the Lord Chancellor?

Lord Phillips of Sudbury (LD): My Lords, I thank the noble Lord, Lord Pannick, for tabling this amendment, which I believe is very important—although I note that only those who are speaking are present tonight. I declare an interest as the founder and president of the Citizenship Foundation, a national charity which seeks to prepare young people in our schools for the life they are to lead beyond them by giving them a broad and very basic understanding of the laws of our land. I am also a co-founder of the Legal Action Group, which is to this day a tower of strength in seeking to advance and protect legal aid. The group is fairly desperate about this order, I have to say.

I accept that it is extremely difficult for my noble friend to have to move the Motion on this order tonight. I know him to be as concerned about equal justice as anybody. I also readily accept that the Government have a lousy task in seeking to balance the national books in a way that does not cause mayhem all round. But having said all that, like others I believe that if ever the word “fundamental” is justified, it is justified in regard to protection of the rule of law and equal justice. I maintain that we cannot claim to be a proud democracy which upholds the rule of law when we know that so many of our fellow countrymen cannot access the laws that we in Parliament legislate for them. Knowing that as we do—there is no lack of evidence on that—it strikes me as being almost a case of defrauding the public for us to go on as we do, enacting legislation for which we make all sorts of claims while knowing that so many of our countrymen will not get near to exercising those rights. That is why all of us have spoken so passionately. We all know that the law is now so voluminous, hypercomplex and intrusive that to pretend that poor or middling citizens do not have need of access to lawyers and the courts is just cloud-cuckoo-land. Indeed, quite a bit of research has been done recently into citizens’ need for legal services and access to justice. That comes up with a figure of about one-third of the population being in that bracket.

I must also agree with the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who very pertinently observed that we must all have been asleep when Clause 180 of the then Anti-social Behaviour, Crime and Policing Bill was enacted. This was an astonishing clause and I do not think that anyone in this House really had a go at it. Yet how can one conceivably agree to a principle that we make a profit out of justice? How can that have gone through this place? Indeed, I wonder whether it is a provision that could withstand oversight of the courts on human rights grounds, quite apart from those being advanced on behalf of the Law Society; I am very happy to see that my professional body is doing that.

Section 180 of the 2014 Act makes no reference to justice at all. Subsection (3) says that,

“the Lord Chancellor must have regard to ... the financial position of the courts ... and ... the competitiveness of the legal services market”.

Subsection (6) says that the surplus made from increased fees—those parts of them that are intended to generate a profit—must go, as my noble friend Lord Marks said, to improving the efficiency and effectiveness of the system of our courts and tribunals. There is nothing to do with the justice of the system. At no point is there any reference to justice. It makes me wonder whether there might be some defect there in terms of basic law. I may have to reinstruct the noble Lord, Lord Pannick, as I used to about 40 years ago. I hope he will give me the same jolly opinion.

Reference has already been made to Magna Carta by a number of speakers. I do not propose to make further reference to it, but we must accept that the cuts in legal aid made last year have knocked one-quarter off the legal aid budget, I believe. The ones that we are dealing with now will affect huge numbers of claims. The scale of the problem is that there are currently 235,000 claims for possession every year; 370,000 money claims via the court are potentially caught by this order; and there are 160,000 general applications in other proceedings.

One aspect of the Government’s impact assessment really caught my eye. Other noble Lords have made reference to it, but not to this set of facts. In one of the consultation documents we learn that the consultation took place in December and January—over Christmas and the new year. Is that not well designed to have a maximum response? The first question in the questionnaire is:

“What do you consider to be the equality impacts of the proposed fee increases (when supported by a remissions system) ...?”.

How many people do noble Lords suppose answered that first, key question? Seventy-six. It is verging on the scandalous to undertake the measures in this order on the basis of 76 respondents. And how many of them thought that the equality issue was adequately dealt with? Less than half. So you have 30-odd people and organisations approving of the central measure which is the subject of this order tonight.

9.30 pm

The scale of the problem has to be measured also in terms of what is happening to the legal profession. Some noble Lords were present at the launch this

afternoon of the second part of the Low commission's work. As your Lordships will well remember, the commission produced a vital measure last year. It shows that 20 years ago there were 10,000 solicitors' firms offering legal aid. That figure is now down to under 2,000. Meanwhile, the population has risen as have the use of the legal system and the need of people to have access to justice. Twenty years ago there were 721 CABs, many of them having several locations. Today there are 338 with only 21 of them offering specialist advice. What has happened to law centres? Their numbers have gone down and down. All that has to be taken into account.

I shall just wear my pro bono hat: I got from the solicitors' pro bono group, LawWorks, the fact that the consequences of the cuts in legal aid last year—let alone the fee rises contemplated by this order—are exactly as you would have predicted. There has been a huge increase in recourse to pro bono help, particularly in welfare where the figure has doubled in the space of a year. Employment tribunals have already increased their fees and we have heard tonight about the impact there. There are 175 law clinics, some operated by universities; I am now talking about the pro bono clinics. They are under assault from all quarters. LawWorks is handling 20,000 cases a year and the figure is rising rapidly. All this points in one direction and one direction only.

I must say a word before sitting down about the profit-making aspect of Section 180 because that operates in a regressive way. We have heard that there can be a fee of £10,000 for claims of £200,000 and more, but the fee does not rise above £200,000. If you have a claim for £200 million it is the same fee as for a £200,000 claim. It is wonderfully regressive and quite what it does for the commerciality of our system I know not.

I want to make one last point and that is that equal justice is to the body politic what equal health treatment is to the human body. Would there not be an uproar if we started to do anything remotely comparable with the provisions in this order to the NHS, where equality of treatment is unassuageable? So I speak with all others in hoping that, difficult though it may be, the Government may find some way of not proceeding with these measures.

Lord Howarth of Newport (Lab): My Lords, I add my thanks to the noble Lord, Lord Pannick, for tabling this amendment. I also thank him and other noble Lords for speaking in criticism of this statutory instrument. Their speeches have been principled, lucid and compelling.

It appears that I may be the only non-lawyer to participate in this debate, and I hope it will not be regarded as superfluous or intrusive if I speak simply as a citizen. To me, access to justice is fundamental to the very nature of British citizenship. The rule of law and equality before the law are, or should be, bedrocks of our constitution and our liberal society. The essential principle, which we must preserve, is that no one should be prevented from bringing a reasonable case to court for lack of financial means. This order violates that principle. The imposition of a 5% fee on claims ranging from £10,000 to £200,000 is, as noble Lords

have noted, a potential increase of the order of 600%. To be required to pay £10,000 upfront as the entry fee to get into court will in practical terms be impossible for many small and medium-sized enterprises, as it will be impossible for individuals who seek to recover debts due to them or to get personal injury compensation or compensation for clinical negligence.

As has been noted, a coalition of lawyers and other expert groups has advised us that:

“These proposals will significantly reduce the ability of individuals and small businesses with legitimate claims to peruse these through the courts ... These increases represent a significant barrier to access to justice ... Increasing fees to fund court infrastructure risks ‘pricing out’ those on low and medium-level incomes, leaving access to justice in the hands of a wealthy few”.

The Ministry of Justice's assessment of the impact of this measure is scandalously inadequate, and not for the first time. We vigorously criticised the impact assessment associated with the LASPO Bill because it was simply not good enough. In the case of the impact assessment for this measure, the Regulatory Policy Committee said in January 2014 of an earlier articulation of the impact assessment, in terms, that the impact assessment is not fit for purpose. The impact assessment that was published alongside this order in January this year is equally unfit for purpose. The criticisms do not appear to have been heeded. For example, in the section that covers key assumptions, sensitivities and risks, the impact assessment says:

“It has been assumed that fee changes will not affect court case volumes ... It has been assumed that there are no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees. It has been assumed that there are to be no impacts on the legal services used to pursue or defend claims”.

In the section on impact, the Explanatory Memorandum tells us:

“Some proceedings to which these fee changes apply may involve businesses, charities, voluntary bodies or public sector organisations. We—

that is, the Ministry of Justice—

“do not routinely collect information on people and organisations involved in court proceedings and we are not therefore able to calculate the impact that the fee increases are likely to have on these organisations”.

In the next section, on regulating small business, the impact assessment tells us:

“Some proceedings to which these fees relate will be initiated by small businesses. We do not have detailed information on the characteristics of those who bring money claims before the courts; how many of these proceedings may be initiated by, or against small businesses; and the types and value of claim they typically make. We do not therefore know what the impact of these fee increases is likely to be on small businesses”.

The Parliamentary Under-Secretary of State for Justice, Mr Vara, in seeking to advocate this measure to House of Commons, said that,

“we must also look to those who use the courts to contribute more towards their running where they can afford to do so”.—[*Official Report*, Commons, First Delegated Legislation Committee, 23/2/15; col. 3.]

The Minister reiterated that thought today.

The problem is that they do not know whether potential users of the courts will in these new circumstances be able to afford to do so. I understand that there are no fee remissions for SMEs. To legislate in avowed ignorance of the impact of the legislation

on those who may seek to avail themselves of legal remedy is reckless. It is breathtakingly irresponsible. The policy is also based on an improper premise that the costs of public services should be fully funded by their users. Again, the Parliamentary Under-Secretary told the House of Commons:

“The normal rule for public services is that fee income should cover the full cost of delivering such services”.—[*Official Report*, Commons, First Delegated Legislation Committee, 23/2/15; col. 3.]

Of course, it is the Government’s intention and it is part of what is provided for in this order that they should go beyond covering full costs; they should in certain cases exceed full costs. I quote from Paragraph 7.2 of the Explanatory Memorandum:

“The Government decided to take a power to charge fee income from courts above the full level of cost for certain proceedings”.

Two reasons are given:

“It did so to make sure that the courts are adequately funded in order that access to justice is protected”.

So they priced the courts out of people’s reach in order to make sure that access to justice is protected. It goes on to say, and this is really revealing:

“It also wanted to reduce the cost of the courts borne by the taxpayer”.

Whatever may be the case in certain areas of government, there is plainly not an expectation that the cost of public services should be covered by fees charged to their users. Obviously it is not the case in the National Health Service or where schools are concerned and whatever may have been the tradition and the practice in the justice system I suggest that this cannot be a paramount principle. A paramount principle is to ensure access to justice. I believe that the overwhelming majority of our fellow citizens accept that there is a social contract. They may not use that language but they understand and accept that they must pay the taxes needed to ensure that there is equal access to justice.

There has been too much cant in too many pronouncements from Ministers at the Ministry of Justice. I immediately except from that charge the noble Lord, Lord Faulks. He may be briefed to utter cant but he would never originate cant. However, I am afraid to say that his colleague in the House of Commons has been less fastidious. He said in the ministerial foreword to the response to the consultation that was published in January 2015:

“I am proud that we live in a country which operates under the rule of law, and where we have such a strong tradition of access to justice ... It is vital that these principles and qualities are preserved so that people can continue to have ready access to the courts when they need it”.

That is his commentary in response to the consultation on the very measure we are debating this evening.

The Lord Chancellor himself, Mr Grayling, at the Global Law Summit, to which reference has already been made, said that we continue to innovate and develop our policy at the Ministry of Justice but always consistent with the principles of Magna Carta. It simply is not so. The Parliamentary Under-Secretary, in talking about the financial context of this policy, again in the response to the consultation, talked about having reduced spending on legal aid so the scheme is more affordable. This is the Alice in Wonderland logic

the ministry employs. By more affordable of course he means for the taxpayer, not for the citizen who needs to have recourse to the justice system. He boasted that,

“we have reduced staffing levels in our headquarters functions, and in the headquarters of our agencies”.

However, what he did not mention in that document was the money that the Ministry of Justice has wasted on information technology. I quote from the *Guardian* of 30 June 2014:

“The Ministry of Justice has written off £56m spent on an IT project after discovering it was late, over budget and duplicated by another department”.

The write-off was equivalent to about a quarter of the amount being cut from the legal aid budget.

9.45 pm

This is a locus classicus of incompetent and bad government. The truth of the matter is that the Ministry of Justice has allowed itself to be bullied by the Treasury, and this has been going on for a very long time. I remember speaking 20 years ago in the House of Commons on regulations concerning legal aid in Scotland—the Advice and Assistance (Financial Conditions) (Scotland) Regulations 1995. Perhaps I may quote myself very briefly:

“If we are all to enjoy the rule of law and to be equal under it, it must follow that, when a citizen has a reasonable case to make, she should have access to the remedies that the law provides regardless of personal means. Of course frivolous and vexatious cases should be screened out, and of course informal procedures should be used when they lead to speedy justice. The procedures of the courts should be as economical as possible. Subject to those conditions, my hon. Friend the Minister should note that I do not mind how much income tax—or any other kind of tax—I have to pay to ensure that that principle is preserved”.—[*Official Report*, Commons, Third Standing Committee on Statutory Instruments, &c., 26/4/95; cols. 7-8.]

I still believe in those words, and it is sad that 20 years later I have, in effect, to repeat them.

The Ministry lacks conviction, and that is the reason it lacks courage. This Government have broken that social contract. They have violated Magna Carta. They do sell, deny and delay justice. They have taken away civil legal aid from people in poverty who seek to challenge the refusal to them of social security benefits. They have sought to restrict the scope for citizens to seek judicial review where they believe there has been executive abuse, and they are now, through this measure, seeking to sell access to the courts at prices that small and medium-sized enterprises and individuals in crisis cannot afford. It is unjust and, I believe, unconstitutional.

I want to be able to be proud of being a citizen of this country. A measure such as this adds to the growing perception that, for our rulers, money is the only value that counts, that government is for the rich and for the powerful, that the law serves the rich and that justice for the poor and the rule of law are marginal. I am ashamed to be a citizen of a country in which such a measure is introduced and I very much share the regret expressed by the noble Lord, Lord Pannick.

Lord Faulks: My Lords, I am grateful to all noble Lords for their contributions to this debate, passionate as they have been. All noble Lords who have taken part—I hope that noble Lords will forgive me if I

include myself—are passionate about access to justice and about the rule of law. I hope that in that sentence I have answered two of the questions posed by the noble and learned Lord, Lord Scott of Foscote. Of course, I very much include the noble Lord, Lord Howarth, who, although not a lawyer, has a long history of involvement in access to justice and stressing its importance in our constitution.

I think it would also be accepted by all those who have taken part that we need a properly funded court system. I said in opening this debate that we are investing more than £375 million over the next five years but that we consider that those who use the courts should make a significant contribution to the cost. The Opposition in the House of Commons did not disagree with the aspiration of full cost recovery, or, and I quote Mr Andy Slaughter, that,

“in some cases the fees should be more than full cost recovery”.—
[*Official Report*, Commons, First Delegated Legislation Committee, 23/2/15; col. 4.]

Of course, I accept that no litigant will welcome increased costs and I also acknowledge that no litigation solicitor will be applauding increased costs either. I acknowledge that concerns about access to justice are entirely legitimate and should be very much a part of any movement in this direction.

The statutory instrument can perhaps be safely divided into those smallish claims—90% or so—where there is no increase in the fees, and the very large claims, which I will come to later. I think that it is fair to say that the main focus of the debate has been on the middle-size claims—those perhaps brought by SMEs or by those seeking damages for personal injuries or clinical negligence. The question is whether the court fees, as a proportion of the sum claimed are such as to be a deterrent and would prevent people having access to justice. It is true that in percentage terms there is potentially a significant increase. For example, as a proportion of £150,000, court fees are now £7,500; they were £1,315. In percentage terms that is significant. But, of course, the original fees until this statutory instrument was introduced, should it proceed, were very modest.

It is also worth bearing in mind that litigation is very much an optional activity. Anybody who is deciding whether or not to sue will have all sorts of factors that they bear in mind. There are plenty of reasons for not bringing proceedings, one of which is uncertainty of outcome. Anyone advising a claimant will probably need to satisfy that claimant that there is at the very least a better than even—probably a 75%—chance of success before they commence proceedings. Another relevant factor is the solvency of the defendant or the likelihood of recovery. All those are matters that will inhibit somebody in deciding whether or not to sue. Of course, there is also the factor of the cost and extent of their lawyers’ fees.

What is important is that the court fees generated here would be recoverable from any defendant in the event of a successful claim. They are a disbursement and cannot be challenged. The same could not be said for solicitors’ or barristers’ fees, which are always potentially subject to challenge. If a claimant has a sound claim and is satisfied about the solvency—of

course, one can never be sure about these things—of the defendant, these sums will be recoverable. That is relevant, first, to the question of access to justice, whether an individual will seek access to justice, and also as to whether a solicitor will feel able, as is often the case in personal injury or clinical negligence cases, to provide assistance with the upfront costs on the basis that they will be recovered in the fullness of time.

Of course, there are fee remission provisions. No noble Lord has mentioned those, but they may be provided. Where there is a household income for couples without children of less than £1,085 per calendar month, there will be full remission—more with children—and there are also provisions for partial waiver. Capital will be taken into account, but this excludes the principal dwelling-house and compensation payments and pensions. The waivers are more generous for those over 61. In suggesting that access to justice will be denied, one should bear in mind all those factors.

When dealing with the top end of claims, the original consultation, as has been said, suggested a higher figure—twice the figure of £10,000. After consultation the Government changed their mind about that and listened to the consultation. The arguments about recoverability apply likewise. But, of course, the larger the claim, the less significant the court fees will be as a proportion of the prospective expenditure.

The quality of our judicial system, of which my noble friend Lord Phillips is rightly proud, is very high, and I am sorry that the noble Lord, Lord Howarth, at least in terms of access to justice, feels so little faith in it. Certainly I do not understand him to be criticising our judges in any way. The quality of justice is, of course, a significant attraction to litigants and will, I suggest, continue to be an attraction. The Government bear in mind the possibility, where there is a choice of jurisdiction, of New York, Singapore or Dubai, but are satisfied, having consulted widely, that this is a reasonable and proportionate increase for these large claims.

Mention has been made of arbitration, and even mediation. Where arbitration is an option, it has to be borne in mind that you have to pay for the arbitrator’s services. Here, were a case to go the entire distance, the judge is provided, as it were, as part of that court fee. In those rare cases where a case goes to trial, frankly, the fee for the use of court premises, court infrastructure and the services of a high-quality judge is very good value indeed. Then there is the 90% below £10,000, where there is no difference. Those are the smaller claims. Those with smaller pockets, perhaps, will have to pay no more than they already pay. How do we get to 90%? The information comes from Her Majesty’s Courts and Tribunals Service, which states that 90% of claims are for less than £10,000. That is currently the case and the basis on which we reach that figure.

The noble Lord, Lord Beecham, mentioned employment tribunal fees, as indeed he did at Questions last week. We estimate that the employment tribunal fees will generate about £10 million per annum, and our current forecast is that income is broadly in line with expectations. I share the view of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, on the fees for employment tribunals.

The question of personal injury claims was raised by the noble Lord, Lord Beecham, and other noble Lords. Conditional fee arrangements have been changed as a result of the LASPO Act, but “after the event” insurance still exists and the “after the event” insurance market still exists. In appropriate cases where an insurer thinks that a claim has merit, it enables court fees to be incurred, which are, as I said earlier, recoverable from the other side.

The noble and learned Lord, Lord Brown, asked why we considered the possibility of making higher fees for commercial claims. We did, and we considered the responses and reduced the figure because we bear in mind that a balance has to be struck between trying to recover some of the money that we think is expended and attracting potential litigants. We did not seek judicial consent; that is a matter for the Government. The question that I was asked during Oral Questions by the noble and learned Lord, Lord Mackay, was about whether the judges had been consulted. He also suggested that he had experienced the possibility of them being judicially reviewed in connection with this. I think noble Lords might agree that, ultimately, the Government are accountable for these matters, and it would be somewhat invidious for judges to have to decide things. They are, of course, entitled to have their opinions taken into account and they have expressed them, as a number of noble Lords have said, in pretty firm terms.

It was said, I think by my noble friend Lord Phillips, that there is no mention of justice in Section 180 of the Anti-social Behaviour, Crime and Policing Act; but he will have seen from the statutory instrument that Section 92 of the Courts Act refers specifically to considering access to justice.

10 pm

A number of arguments that if this reaches court might come before the court in the judicial review were raised. It is inappropriate for me to answer them in detail. Suffice it to say that I am entirely aware of the principles. I and the Government are satisfied in so far as we can be that there will still be access to justice. Although I know that in view of his fourth question the noble and learned Lord, Lord Scott of Foscote, would like me to resign now from the Government, I gracefully decline that invitation for the moment.

Of course, we do not know precisely what the long-term effect of these fees will be and it would be idle to pretend that we do. One has to make an estimate based on considering all those factors. It is unlikely, if one thinks about it, that a consultation suggesting that you increase the fees will be broadly welcomed by anyone, but it is worth mentioning the question of how courts are funded and whether they should be funded by taxation. Under these plans, the courts and tribunals will continue to be funded mainly through taxation, with less than 40% of funding derived from fee income, so there is still a significant element of that, which deals to some extent with the point about there being access to justice regardless of the crude calculation of its cost, because I entirely accept that to be the case.

We will monitor the case load and keep the position under review. The colleague of the noble Lord, Lord Beecham, in the House of Commons, Mr Slaughter,

said that his party if in government would review the matter at an early stage. If our estimates are wrong it would be necessary to review them, but for the moment the Government feel that, notwithstanding the trenchant criticism that has been offered of the Order, this represents a sensible and proportionate way of recovering some of the costs of access to justice.

The noble Lord, Lord Pannick, expressed himself with his usual clarity and economy and once again did not spare the Lord Chancellor from his criticisms. We are coming to the end of this Parliament. It was Frank Sinatra who, in his valedictory song, said that he had some regrets but too few to mention. The noble Lord, Lord Pannick, has had rather more regrets over the Government’s policies. Indeed, I have had to respond to many of his Motions of Regret. Before I had the privilege of standing at the Dispatch Box, my predecessor did as well. The noble Lord has certainly held the Government to account and has been a forceful critic of the Government. As far as these fees are concerned, I hope that my response has done something to mollify his regret, and I ask him, having considered the matter, to withdraw his amendment.

Lord Brown of Eaton-under-Heywood: The Minister mentioned that Section 92(3) of the Courts Act 2003, which is the requirement that when making one of these orders, states that,

“the Lord Chancellor must have regard to the principle that access to the courts must not be denied”.

I thought the Minister said that that had found its way into the actual Order. I have been looking at this and of course I am sure I shall be corrected, but an awful lot of provisions are referred to there but rather oddly not Section 92(3). One might have thought that it would be, because the second paragraph in the recital says that he has had regard to matters referred to in Section 180(3) of the 2014 Act. That is actually where one would have hoped and expected it to appear. I do not know that he makes any reference to having had regard to that provision, which the earlier statute required him to have regard to. As I said, I am open to correction, and apologetic in raising this point today.

Lord Faulks: I am grateful to the noble and learned Lord. He is quite right: the recital refers to the fact that there is an exercise of the power conferred by Section 92(1) and (2) of the Courts Act and the consultation in accordance with Section 92(5) and (6). There is no explicit reference to Section 92(3). However, in purporting to exercise those powers, it would be said, although not specifically recited, that he was exercising them in accordance with the remainder of that section.

Lord Pannick: I am very grateful to all noble Lords who have spoken—and spoken passionately—in this debate. The Minister said that the order contains sensible and proportionate provisions. As your Lordships have heard tonight, these proposals are going to do inevitable and substantial damage to access to justice. It is simply perverse for the Government to dispute that many small businesses and many personal injury claimants are going to be unable to pay an up-front £10,000 fee as the price of access to the courts.

The noble Lord's and the Government's argument comes to this. Funds are needed to pay for the court system, but there is no point in having a civil court system if ordinary people are to be charged an entry fee which they cannot afford to bring basic claims for breach of contract and personal injuries. The Minister described litigation—I wrote this down, because it was a very striking phrase—as an “optional activity”, like a skiing holiday or a visit to a three-starred Michelin restaurant. As the Minister well knows from his experience as a very successful barrister, for many people—those suing for debts or to recover compensation for personal injury—litigation is often a necessity to keep your business alive or to maintain any quality of life. The Minister is absolutely right that there are already many impediments to access to justice. That is surely no justification—no excuse—for the state to erect further high barriers.

The fee remission provisions to which the Minister, perhaps somewhat desperately, referred are not going to assist other than in exceptional cases. Nor is it any

answer that court fees can be recovered from the other side if the claim succeeds. Claimants need to find the fee up front.

The Minister referred to my earlier Motions of Regret with a reference to Frank Sinatra. To change the music somewhat, “Je ne regrette rien”. Happily, the courts have done more than regret. In a series of cases they have quashed Mr Grayling's regulations which we have regretted in this House. My regret—my astonishment—that the Government should bring forward an order of this nature is mitigated only by my optimism that the courts will inevitably add this order to the long list of Mr Grayling's regulations which have been declared unlawful in the past three years. With thanks to all noble Lords, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

House adjourned at 10.09 pm.

Grand Committee

Wednesday, 4 March 2015.

Arrangement of Business *Announcement*

3.45 pm

The Deputy Chairman of Committees (Baroness Andrews) (Lab): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Single Use Carrier Bags Charges (England) Order 2015

Motion to Consider

3.45 pm

Moved by Lord De Mauley

That the Grand Committee do consider the Single Use Carrier Bags Charges (England) Order 2015

Relevant documents: 21st Report from the Joint Committee on Statutory Instruments, 23rd Report from the Secondary Legislation Scrutiny Committee.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con): My Lords, Schedule 6 to the Climate Change Act 2008 enables Ministers to make an order to bring in charges for single-use carrier bags. I shall explain the main elements of the charge but, first, I should like to remind the Committee why the Government are legislating for a modest charge on single-use plastic carrier bags.

We are committed to reducing the number of these bags in distribution. This will in turn reduce the environmental impacts of the production of these oil-based products. It will also reduce the impact of plastic bags at the end of their lives, particularly on the visual environment and wildlife when they are littered. Similar charges in other countries have demonstrated how effective this simple measure can be. Customers are encouraged to reuse their bags, rather than incur the charge. When bags are charged for, we expect the profits to be directed to good causes.

There are currently too many single-use bags being needlessly distributed. Efforts to reduce the number of single-use plastic bags without resorting to legislation have led to a good deal of success in the past. Such voluntary initiatives by retailers saw a reduction in the distribution of single-use plastic bags by 48% between 2006 and 2009. This was significant progress, but the number of single-use plastic bags given out is on the rise. In England between 2010 and 2013, there was an increase of 18%, which is just over 1 billion bags. In 2013 alone, England's main supermarket chains issued more than 7 billion single-use carrier bags to their customers. As we all know, far too many of these bags made their way on to the streets and into the countryside as unsightly litter. They were also discarded on beaches and in the sea, where they can cause harm to wildlife.

Plastic bags also have a negative impact on the environment through their production and disposal. The oil that is used in their creation and the tonnes of plastic that go to landfill mean that we must take action to reduce the use of plastic bags. Where they are used, these bags should be reused as often as possible and then recycled.

The Environmental Audit Committee's report on plastic bags last year was carefully studied by the Government. There may be some details of the scheme on which we agree to disagree, but we are all in agreement that reducing bag use has real environmental benefits. It will mean lower carbon emissions, more efficient use of valuable resources and less litter.

The order introduces a requirement to charge for single-use plastic bags. There has been a largely positive response to the announcement of the charge, which is a proven tool. In its first year, the Welsh charge resulted in a decrease of 76% in the number of single-use plastic bags distributed by the seven big supermarkets. We have been able to use the experience from the Welsh charge to help shape our scheme. A similar charge was introduced in Scotland last October. The English charge will commence in October 2015. It will require retailers to charge a minimum of 5p for every new single-use plastic carrier bag—the same as in Wales and Scotland. Bags used for deliveries will incur the charge, as well as those used to carry purchases away from a store.

Small and medium-sized businesses will be exempt from the charge in England. We recognise that some wanted SMEs included but we concluded that we need to avoid administrative burdens on start-up and growing businesses in England at a time when we want to support new growth in our economy. It is also worth bearing in mind that the current UK retail market is dominated by a comparatively small number of large stores with over 500 employees, employing 65% of people working in retail with 69% of all annual turnover of retail businesses. Any retailer that is not covered by the legislation will of course be able to charge for bags voluntarily.

As in Wales and Scotland, we hope—indeed, expect—retailers will give the proceeds of the charge to good causes. The Climate Change Act does not give the Government the powers to determine what retailers do with the proceeds of the charge. However, we will require them to report to the Government the number of bags they give out, the amount raised by the charge and what they do with the proceeds. We will then make this information public and expect that pressure from customers will ensure that the net proceeds—once reasonable costs have been deducted—go to good causes. Many of the large retailers have already stated that they will be giving the proceeds to charities or community groups and will publish details on their websites.

It would, of course, be fitting if some environmental causes were to benefit from the charge in England. In Wales, charities such as the RSPB, Keep Wales Tidy and Save the Children have benefited from the proceeds of the Welsh charge. Keep Wales Tidy has used the funding to support a Routes to School project, which aims to address litter problems on school routes by

[LORD DE MAULEY]

engaging and educating children and their families. It is not only charities that stand to gain from the charge. When littered, carrier bags cost taxpayers in England about £10 million every year in clean-up costs.

Of course, there will always be a need for some plastic bags. People may forget their reusable bags, or they may require a new bag—for example, to avoid contamination if they are buying raw meat. At the same time, we should aim to reduce the visual impact and harm to wildlife if these bags were littered.

A bag that biodegrades into harmless products is clearly desirable. That is why we are working with industry and academic experts to review existing standards and will report to Parliament before the charge comes into force on 5 October 2015. The report will state whether it appears that there is an existing industry standard or standards appropriate for excluding biodegradable bags and, if so, how that exclusion is to be implemented. We are keenly aware that the success of a biodegradable bag will also depend on more sophisticated ways of separating plastic waste. We need to ensure that the quality of recycled plastic does not suffer as a result of contamination with biodegradable bags.

We are focusing the charge on plastic bags as part of a targeted and proportionate approach to this issue. Plastic carrier bags take the longest to degrade in the natural environment, can harm wildlife and are extremely visible when littered in our towns, parks and the countryside. Paper bags make up less than 0.1% of carrier bags distributed in the UK by the seven major supermarkets and can biodegrade naturally in the open air. Of course, paper bags should still be reused a number of times before being recycled and should never be littered.

There are a few specific circumstances described in the legislation in which bags will not incur the charge. These include, for example: bags used solely to carry uncooked meat or unwrapped food and goods contaminated by soil, where there would be issues with food safety from contamination; bags for prescription medicines, where pharmacists have an obligation to protect the privacy of patients; and reusable bags for life. Purchases made on board planes and boats and in airports will also not incur a charge as it would be unreasonable to expect people to be carrying reusable bags in those transit places. The charge will be enforced by local authority trading standards officers. It will be light-touch, pragmatic and complaints-led. We are funding training for local authority officers.

A full assessment of the costs and benefits has been carried out. The total net impact of the scheme over 10 years is calculated to be a positive benefit of more than £780 million. That figure includes savings from reduced costs associated with littering and carbon dioxide-equivalent emissions.

Although consumers may incur an initial cost in purchasing reusable bags, these are designed to be reused many times and the supermarkets will replace them for free. Although single-use bags will now cost 5p, anyone who wants to avoid paying the charge will be able to do so by taking their own reusable bags to the shops. We encourage people to do this.

We expect that there will be an increase in sales of bin bags, as there was in Wales, as people currently often reuse single-use plastic bags to line their bins. However, even when this is taken into account, the impact of the charge in Wales has been a dramatic overall reduction in the amount of plastic used. We anticipate that the charge will reduce plastic bag distribution in supermarkets by between 70% and 80%, and overall in England by between 50% and 60%.

The order includes a review of the legislation to be carried out within five years of the charge coming into force. It will be at that stage that the reporting requirement will prove essential in assessing the effectiveness of the charge. Any changes to the legislation could also be considered at that time.

We are pleased that the European Union has reached agreement on a robust plan for tackling the blight of plastic bag pollution, with each member state doing what works best in its own circumstances.

In summary, the Government consider that the approach set out in the order provides a fair means of charging that supports the Government's aims of minimising waste and resource use. I therefore commend the order to the committee.

Lord Anderson of Swansea (Lab): My Lords, the Minister began his speech with a ringing declaration: "We must take action". He set out a very convincing case on financial and environmental grounds for the action that the Government propose to take.

I recall the dedication in the magnum opus of a regius professor: "To my wife, at last, at long, long last". The key observation is on the process of government and why there has been such a long delay on what is clearly an overwhelming case for action. It is not as though this is some startling brave new initiative on the part of the Government. No, as the Minister said, the proposal is already in force in Wales and has been since 2011. There has been ample time to see the results. It is not some laboratory experiment. We can see the results in Wales already; in Northern Ireland, since 2013; and in Scotland, since last October. It is not as if the results are uncertain. If we have eyes to see, we can clearly see the results. Given the very close nexus between Wales and England, do the Government seriously think that the response of the public and retailers would be different in England? All this vast expenditure on research and consultation in England is surely otiose. The views of the Welsh public are already well known. Do the Government have any strong indication that Welsh public opinion is different? The effect of all this is further cost and degradation.

I recall that in my Parliamentary Question on 14 May 2013, I asked,

"the pilot scheme in Wales has lasted for several years. Will the Minister spell out very clearly the objections to the implementation of the scheme in England?"

The Minister answered:

"My Lords, as I just said, we are monitoring the charging scheme in Wales and data from the first year will not be available until the summer".—[*Official Report*, 14/5/13; col. 264.]

That response was given in May. Now almost two years have passed and, even for the limited scope of the Government's plan, they have been two wasted

years. Since we know that 7.9 billion bags were given out in 2013, the two wasted years effectively amount to almost 16 billion bags. There was a successful test in Wales, which was clearly accepted by the public.

To give my personal position, I shop in supermarkets and retail stores in both Wales and England. There were no concerns in Wales when the charge was introduced. People fall quickly into the habit of taking along shopping bags to the supermarkets. When I shop in London, I do so with exactly the same habit and take along a shopping bag. I am sure that the bulk of people in Wales would do the same.

I note also that in Article 1(d) the Government have suggested an end date of 5 October 2022, as though they are not wholly convinced. What is the purpose of having an end date for this long experiment? It is something that is already working successfully in Wales. Does this mean that the Government are not wholly convinced? We know that a Government can review or end such a situation at any time if they choose to do so. Why include a sunset clause when the evidence is so clear?

4 pm

Perhaps I may make a few comments on the Explanatory Memorandum. We are told in paragraph 2.1:

“The Order will ensure that retailers with 250 or more employees charge a minimum amount for unused single use (lightweight) plastic bags”.

What proportion of the total number of plastic bags will be covered by stores employing 250 or more employees? It means that a fairly sizeable number will not be covered, even though the Government are convinced at last of the environmental and financial benefits. Indeed, we are told in paragraph 5.1 that there is,

“a smaller number of retailers located outside England who supply lightweight plastic bags for the purpose of enabling goods to be delivered to persons in England”.

Surely they cannot be from Wales, Northern Ireland or Scotland. Where do these bags actually come from? It is made clear in paragraph 7.6 that,

“requiring 5p to be paid for each single use plastic bag supplied will significantly reduce the number that people use. As yet unpublished, social research has suggested that this is acceptable to consumers”.

We could have told the Government that without any recourse to social science research because it is there in plain sight for them to see in the way that this has been accepted in Wales.

I am wholly unconvinced by the Government’s reasons for the delay. We are told, of course, that those with fewer than 250 FTEs will be able to charge on a voluntary basis if they wish, as set out in paragraph 7.8, and that,

“we know of one franchiser who is already encouraging its outlets to do this”.

What sort of reporting and administration will there be? What will happen, for example, if these smaller retailers choose to pocket the sum? Will there be any review of the money that is given to charity?

I could go on analysing all the elements here, but it is clear that the Government should have taken this action a very long time ago. Now they have gone part

of the way along the road with much ado. Any sensible Government would have looked not at a laboratory experiment, but at the actual result in Wales of how the public have responded to the initiative taken there. However, the Government have chosen to ignore that and to carry out their own research, which was both unnecessary and otiose. They should not be applauded for this belated initiative.

The Earl of Lindsay (Con): In speaking, I declare an interest as a non-executive director of BPI, which is one of Europe’s largest manufacturers and recyclers of polythene film. However, I stress that BPI has no interest in single-use carrier bags. I welcome this order and its overriding purpose is admirable. However, it is of concern that some of the details of the order go against the unanimous advice of the Environmental Audit Committee, the advice of the British Retail Consortium and a number of other retailers outside the BRC, and the advice of a number of industry organisations. I should stress that it is the detail of the order, rather than its overriding purpose, which has caused a number of organisations and the Environmental Audit Committee some concerns.

In addition, I believe that the detail of the order is, in parts, at odds with the Environment Agency’s own life cycle analysis. Therefore, it is regrettable that, while there may have been—as the noble Lord, Lord Anderson suggested—a delay in bringing forward the proposal, the order itself has been rushed as regards the opportunity to discuss with other parties what the detail of the order should contain.

The EAC held exhaustive investigations into the proposals, and concluded by flagging a number of concerns to Defra in its report, including the fact that the exemptions proposed in its charging scheme for small retailers, and paper and biodegradable bags, would make the scheme too complex. More specifically, the Environmental Audit Committee ruled that an exemption for biodegradable carrier bags was not viable because of the damage such an exemption would cause to the UK plastic films recycling industry. I will focus on the exemption relating to biodegradable bags, because of its unintended consequences.

The summary of the EAC’s report states:

“The options for disposal and recycling of bags are complex, with significant risks around contamination, and must be coherent with the Government’s wider approach to reducing and managing waste. The proposed exemption for biodegradable bags risks damaging the UK plastics recycling industry, could undermine the reduction in bag use, and is not necessary. It should not proceed”.

The Packaging and Films Association agrees, pointing out that if biodegradable or oxodegradable plastic carrier bags are used, they will result in an adverse impact on the recycling process of plastic, rendering recycled plastic totally unusable for certain applications and severely reducing its performance for others.

It is not just the PAFA. Studies by universities have proved that with inclusion rates in recycle of biodegradable and/or oxodegradable materials at very low levels—between 2% and 5%—the quality of the recycle is severely impaired. There are also concerns, incidentally but not unimportantly, that such an exemption

[THE EARL OF LINDSAY]
would send a confusing message to consumers, whom the industry wishes to encourage to reuse and recycle products at the end of their life.

The industry is wholly committed to the reuse of its products, and many in the industry have no problem with the proposed levy and support this order. However, they are widely concerned about the scale of the impact that an exemption for biodegradable and/or oxodegradable products would have on the UK's existing plastics recycling industry. Those concerns have been recognised in Europe, where oxodegradable technology has now been recognised by almost every major European retailer and every other major western EU member state as not being a suitable alternative to biodegradable materials.

The UK polythene film recycling industry, which supports thousands of UK manufacturing jobs and is an excellent example of advancing the circular economy, has no financial or business interest in the manufacture or sale of single-use carrier bags and thus has no competitive interests in those products. The oxodegradable manufacturers' association, which I understand is promoting such an exemption, supports just 32 jobs in the United Kingdom.

It is inevitable that if an exemption for biodegradable or oxodegradable single-use carrier bags is included in any regulation at a future date, as anticipated by this order, it will result in an increase in these products becoming included in the UK plastics recycling waste stream. My noble friend pointed out that more sophisticated methods are needed for separating biodegradable from non-biodegradable materials—he is right. Not only are more sophisticated methods of separation needed, but we have to be economically realistic. This difficulty is likely to play into the hands of exporters, whose recyclers can hand-sort, and would undermine the UK recycling business, which has been driven towards automation and cannot afford to add labour to hand-sort.

To allow those products to enter the UK plastic films waste stream would have other regrettable consequences as regards the existing reuse of plastic and plastic films. I will give noble Lords just one example. One of the major uses for recycled plastic pellets is the manufacture of building films and membranes used in the construction of all new housebuilding. From June 2015, all materials supplied to the UK housing and construction markets will be required to include a lifetime guarantee. To give such a guarantee will not be possible if the raw material used in the manufacture of these products could include bio or oxodegradable content, which could cause product failure within the lifetime guarantee. This will result in the manufacture of these products reverting from using recycled sources to using prime or virgin raw materials, and thus reduce the available market for UK-manufactured recycled plastic pellet. It has been suggested that this is a small price to pay for the inclusion of a biodegradable exemption. However, with so many UK manufacturing jobs at stake, such a suggestion is viewed as being incomprehensible. I could cite plenty of other examples of similar unintended consequences.

I must restate that the UK plastic films recycling industry does not have any interest in the manufacture or sale of single-use supermarket carrier bags and supports the Government's purpose in introducing a charge on single-use bags. However, the proposed exemption for bio or oxodegradable bags will have a detrimental impact on the UK plastic films recycling industry and will lead to immediate problems and unintended consequences. Also inherent in such an exemption are real difficulties in terms of policing and the opportunities for fraud. I do not know whether Defra has considered this inevitable dimension and the resourcing of this oversight. Can the system be properly administered? I am not sure.

The chairman of the British Plastics Federation's recycling group said recently:

"Over the last three years, the UK has seen the emergence of significant infrastructure to support plastics recycling. This is at a critical stage where it is necessary for these investments to demonstrate profitable growth and to meet the needs of higher overall recycling targets. This policy exemption could undermine these businesses due to the potential for contamination".

The director-general of the British Plastics Federation, speaking on behalf of the wider industry group, Plastics 2020, said:

"All this will spell a loss of jobs in what has been a potentially thriving plastics recycling sector and put paid to further progress in meeting Government's ambitious recycling targets".

Let me finish with a quote from the British Retail Consortium. It stated:

"Biodegradable bags can be really confusing for the consumer and very challenging for the retailer to be able to communicate how to dispose with these bags correctly. Biodegradable bags cannot currently be recycled along with single use carrier bags—a challenge for those supermarkets providing front of store carrier bag recycling points. There are serious doubts about the environmental benefits of oxo biodegradable plastics. They cannot be composted, they add nothing to incineration, there is mixed opinion about their fate in landfill, and reprocessors do not want this material because their customers have doubts about the effect on the longevity of constructional plastics".

I strongly urge the Minister to think carefully about how the review that the order requires to be carried out by 5 October 2015 is carried out. The requirements of that review, which are set out in the order, should include a cost-benefit analysis of the effect of implementing an exemption for bio or oxodegradable plastics.

The Lord Bishop of Chester: I am sure that one would not want a bishop to put himself forward as a paragon of virtue, but I have in my hand a bag that I have used for the last 20 years, which my Danish mother-in-law bought in Copenhagen. It is a shopping bag, and I walk around your Lordships' House with it. There it is. I have two of them, which I treat as one might treat one's pet cat or dog.

I welcome the order and hope that cathedral shops, which do not employ anything like 250 people, and other such places involved in the life of the church, will join the spirit of the change, make the charge and not just pocket the benefits for their own charitable purposes.

I have a couple of questions for the Minister. Will the exemptions in this order parallel exemptions that apply in Northern Ireland, Wales and Scotland? If

not, why are some greater than others? It would be helpful to have that information and the logic of that. Also, the figure of 250 seems quite high. How easily would the Government be open to a reduction in that figure? Indeed, what is the equivalent figure in the other parts of the United Kingdom? Are other materials used in packaging single-use? Lots of vegetables are presented in plastic packaging that is essentially single-use. As I look around the roadsides at this time of year, when you especially see all the plastic debris before spring comes, the litter is by no means only single-use plastic bags from supermarkets.

My final question relates to the remarks of the noble Earl, Lord Lindsay. If a plastic bag biodegrades, what does it biodegrade into? I had a misspent youth as a chemist and my guess is that the bag biodegrades into carbon dioxide, inasmuch as there is carbon in the plastic. Other people here will probably have greater scientific skills than me, but that is what happens. When plastic biodegrades, the carbon in the plastic becomes carbon dioxide—as I understand it and unless I can be corrected. Why make this order under the Climate Change Act and provide an exemption for biodegradable bags when they biodegrade into carbon dioxide? That is, if I have got my primitive chemistry correct, some decades on from when I last practised. I want to welcome this but some broader questions should be asked around the order.

4.15 pm

Lord Holmes of Richmond (Con): My Lords, I rise to raise a number of issues with the order. I do not think anybody would disagree that plastic bags, when chucked out of car windows or off cliffs, are unsightly, dangerous to marine life and wildlife, and generally a bad thing. However, the bags themselves do not find their way off the cliffs or out of car windows. It is a person who throws the bag out of the window. When a murderer stabs somebody to death with a Stanley knife, it is not the Stanley knife that kills the person but the murderer who pushes the Stanley knife into them.

There is a great deal of inconsistency, incoherence and muddle with this rushed order. I turn to the material itself. Plastic comes up pretty favourably in terms of overall impact as against paper, unless paper is considered to be used multiple times, which for shopping bags is highly unlikely. First, how can we have an order that applies to one material while discriminating against many other materials? Secondly, how does it fit in with EU law to single out one material for special treatment while leaving other materials unfettered? Similarly, on the 250 employees point, that is an interesting figure but pity the poor seagull choking to death on a plastic bag, only to be told, "I'm really sorry, pal, but it came from a local store of only 50 employees in the overall chain". Or imagine the same seagull on another occasion, choking on a supermarket plastic bag only to be told, "It's not great for you, pal, but someone did pay 5p for it so at least we have moved on there".

Similarly, and on a point previously raised, how do these regulations sit alongside those already made in the devolved nations? If we are to have an approach to

single-use plastic bags, it would seem sensible to have coherence across the country. We are the United Kingdom of Great Britain and Northern Ireland. This really could be one small measure to connect across that United Kingdom.

Another point that has already been raised but is worth reiterating is the one about oxo- and biodegradable. What is the Minister's view on how this can be effectively transitioned into the overall plastic bag policy and approach, and what will this do to the recycling process, apart from throw it into complete and utter chaos?

My noble friend the Minister described the 5p charge as a modest charge. He set out eloquently in his introduction the magnitude of this problem, but we have a modest charge. If you pay 5p, you can carry on with this behaviour quite happily. A 5p entry fee to chuck a bag out of a window—whatever you choose to do with it—is not really a high price. Does it really go to the heart of the stated aim of this order?

With regard to the redistribution, as set out by Defra, there are no powers for Defra to say anything about the redistribution of these funds. Who can say where they will go and what they should go on? Why should we create something that effectively gives businesses of more than 250 employees the right to set up a brand new branch of their corporate social responsibility policy, where they can choose wherever these 5ps go? They are not their 5ps, they are the 5ps of the customers who have been having to pay this to get the groceries they have already paid for home from the supermarket. It is a 5p tax on carrying your stuff home rather than having it in your arms or other bags because you happened to turn up with no bags. Those 5ps will be multiplied to give supermarkets and other businesses the right to set up virtue funds on whatever they choose to spend them on. Who will decide, who will determine and who will measure? Who will say whether these are good charities or organisations to have this money spent on? Who can say whether the so-called environmental causes that a lot of this money is likely to go to have a positive impact on the environmental aims so stated? Who can say?

Who can say whether the money even gets redistributed at all? As set out in the Defra paper, there is an "expectation" that that is where these 5ps will go. An expectation—what a marvellous concept. I apologise for coughing: a single-use bag got stuck in my throat to highlight the problem we are discussing. What sort of impact does an expectation have? We can save a lot of money with the new super-prisons and other institutions we are building by not putting any walls around them because we can have an expectation that the prisoners will stay within the grounds. An expectation—what oomph does that really have?

In conclusion, we are talking about single-use bags but what we have as currently drafted is a ragbag of an order that is incoherent and inconsistent. Does it really go to the heart of any environmental matters? I ask the Minister: what percentage of overall landfill is made up of single-use plastic bags? I hope my noble friend will be able to consider some of these points and get the order into a more coherent shape by the time it is laid.

Lord Dubs (Lab): My Lords, I broadly welcome this proposal. Some of us have been arguing about it for years and years. I remember that when I raised it with another Minister, I was slapped down and told that the Government had no intention of doing this, even though I pointed out that it was a benefit and the Government might even raise some revenue. At the time we were talking about a tax on the bags rather than a donation to the supermarkets.

This is a good idea. I think Ireland started this even before Wales and it seems to work pretty well there. Despite the objections of the noble Lord, Lord Holmes, the system works pretty well where it has been in used in Wales, Ireland and Scotland. But I welcome the Government as a repenting sinner. The Government were against this in the past, but it is pretty good that they are in favour of it now.

Some supermarkets—Sainsbury's or Marks & Spencer or both—charge 5p already. But, of course, they do not publicise the fact at the till. It is only when one does a self-service transaction, by putting one's purchases against the barcode—you see, I go shopping myself; how many others go shopping?—that, occasionally, it asks you to indicate whether you have no bag or that you should be charged for the bag. Sometimes, for very small bags, there is no charge. The system needs more publicity, both at the point of sale and more generally. If people know that they are being charged—sometimes it is easy not to notice, they might pay more attention.

I remember some years ago, when Ireland introduced the scheme, I was at a conference with Irish politicians in Oxford. We looked out the window and saw somebody walking along the street with 15 plastic bags—I think they were the orange Sainsbury's ones. The Irish politicians said, "That wouldn't happen in Ireland any more". They have stopped it, and it works there. We are following on a bit late, but we are doing it.

My other specific point on publicity is this: I am trying to interpret the exemptions. If, say, somebody buys six loose oranges, does that enable them to have a bag without the charge or would the charge apply? It is not clear to me. Sometimes fruit is packaged and sometimes it is sold loose. It is slightly less expensive if it is sold loose. I wonder how that will be handled.

I understand that there is higher energy content in making a paper bag than a plastic bag but there is a good argument against plastic bags.

A lot of us were brought up to go out with a shopping basket—I am old enough to remember that—or bag and would not dream of expecting the shop to provide the packaging. There is no harm in going back to that.

I add one other plea about the amount of plastic wrapping on products, which is not directly concerned with the order. Buy a simple toothbrush and try to open it without a pair of scissors or a knife; it will be too firmly packaged. The Government should move on from this to look at other forms of packaging, which are totally excessive and add to the amount of plastic in the environment.

Baroness Golding (Lab): My Lords, I did not intend to speak, but I think I should, following my Welsh cousin's contribution. Some time ago, I went on holiday to Wales and found myself being charged 10p for a plastic bag. I made some inquiries among my Welsh friends. It cost 10p in north Wales, 5p in mid-Wales, 2p in south Wales and nothing if you knew the shopkeeper well. I had my doubts about the whole system already, but I remembered that, in north Wales, I had looked at where the money from the plastic bags was going—into the shopkeeper's till. There was no way that you could tell where the money from the plastic bag went eventually or how the shopkeeper paid it. There was a little box on the counter where you put the money for the plastic bag, but the shopkeeper took the money and put it in the till. That was my experience in Wales. When I went back home to England, I had a good look around for these plastic bags that the Welsh had been tossing around on the seashore, in the streets and everywhere else—supposedly. In one month, I found one plastic bag blowing around in a car park. That was the only sign I had that plastic bags were being thrown around.

I think the whole idea is nonsense. It is the customer who is paying again, and paying twice. The shopkeeper has already paid for the plastic bag and covered that in the cost that he is charging for whatever you are buying. You are paying twice, and the shopkeeper is getting back the money that he has already paid for the plastic bag. Everybody should be happy but the customer should never be happy about being charged for plastic bags.

4.30 pm

Viscount Ridley (Con): My Lords, I want to make a couple of quick points and press a couple of questions similar to ones that have already been made. What we are talking about is known in economics as a Pigovian tax. I know this is not a tax but Pigovian taxes are intended to discourage activity. The one thing economists say about them is that they should be as technology-neutral, as transparent and as even as possible, otherwise they simply push down something that pops up somewhere else. I worry that we are talking about dealing with what is a very small part of the amount of plastic litter that ends up in the countryside. The point has been made that there is an awful lot of litter on roadsides, particularly at this time of year, and relatively little of it consists of supermarket plastic bags. I have heard the figure of 1%, although I do not know if that is right. Is it not possible to come up with something much more neutral about plastic technology generally across the board, to see whether we can discourage it without picking on this one bag?

I find it very hard to believe that the savings in littering and CO₂ will be in the region of £780 million—I think that was the number I heard. This is only a relatively small part of the litter that is around. I cannot believe that 10 minutes less spent picking up litter on the side of the road because there are no plastic bags there will add up to £780 million. On the CO₂ point, I echo what the right reverend Prelate the Bishop of Chester said. It is not at all clear that the alternatives will produce less CO₂—unless we all use the equivalent of the right reverend Prelate's bag and I

am not sure that everybody will. We know that more energy often goes into making paper bags by the time that transport and everything else is taken into account, whether or not, as my noble friend Lord Holmes said, that paper bag gets reused. We also heard from my noble friend Lord Lindsay that oxydegradable plastic bags will have an impact on the recycling chain. Can we make absolutely sure that, when we quote figures for the amount of carbon dioxide that will be saved by this measure, they are honest and properly audited? One hears some claptrap in this area and it would be nice to be sure that the figures are right.

The hypothecation of taxes—that is, when a tax automatically goes to one use rather than just into the Treasury—is something that the Treasury has always resisted. I know that this is not a tax—it is a charge—but none the less it has been hypothecated to certain good causes. On the whole, that is quite a good idea, as long as the customer is allowed to direct where it goes. I hope that that becomes a slightly more general point across government.

Lord Whitty (Lab): My Lords, I suspect the Minister was hoping for full approval for this government initiative. I am gratified that the Government have finally got around to it. I have been campaigning on this front for at least 15 years, so I am glad that, 13 years after the Republic of Ireland, and then following the devolved Administrations within the UK, we have at last reached this position. To continue the scriptural allusions of my noble friend Lord Dubs, there is always much joy in heaven for a sinner who repenteth, and we should all appreciate that. Nevertheless, we could have had a much clearer policy announced today—one that would have been better understood by the public. I was struck by the point made by the noble Lord, Lord Holmes, that it is people who litter, not bags. That is absolutely true. However, as the noble Viscount, Lord Ridley, said, the whole point of this tax is effectively to change behaviour. It is not a tax; it is a levy.

My noble friend Lord Anderson referred to the experience in Wales. I happened to be in Tesco in Dundee on Sunday with a young lad. I would not say that he had great green credentials nor that he was always affected by prices, but he had already—this is relatively new in Scotland—changed his behaviour and brought a bag with him. That is the point. Yes, in the end, it is people who create litter and, by using these plastic bags, not only cause unnecessary carbon emissions but bring desecration to our countryside, wildlife, marine life, beaches and many of our city centres. I am glad that my noble friend Lady Golding found only one plastic bag in her car park, but I must say that that is not the general experience in either urban or rural car parks, or in other open spaces. It has been reported that some 2,000 of them can be found on every square kilometre of beach. That is atrocious from the aesthetic as well as the environmental and economic point of view.

I welcome the principle, but it has been unnecessarily curtailed, and in such a way that it does not do what it alleges it intends to do. The big exemption is for retailers with fewer than 250 employees, which exempts quite large retailers and represents around a third of all retail outlets. These exemptions do not exist in the

devolved Administrations, but the exemption for very small retailers from completing the reporting mechanisms—the real red tape and administrative burden—is set at 10 employees. That seems to be a sensible approach. The exemption should be from the reporting and administrative burden, not from the requirement to impose the charge.

The exemption makes a big difference to the figures in the Government's own impact assessment. The net present value of this over 10 years, according to the impact assessment set out on page 7 of the Government's report and as indicated by the Minister, is £782 million. However, it would rise to more than £1 billion if all retailers were included. The Government's position would be understandable if the retailers themselves were strongly pressing for this exemption, but I am sure that other noble Lords have seen the representations from a number of organisations that represent retail outlets, all of whom are saying, "This is daft and will actually impose a burden on retailers that will put them at a competitive disadvantage in certain respects".

The British Retail Consortium has said that it is unfair to put smaller retailers in a position where they have to choose whether to charge. There are doubts about having an inconsistent position across the UK. The Association of Convenience Stores has said that some 60% of its members support a single-use carrier bag levy being applied, and in Wales, where it has actually happened, more than 80% of convenience stores support it. The association would strongly support its own membership being covered by this in England as well as in Wales, Scotland and Northern Ireland. The British Independent Retailers Association, which is the voice of the independent retailer and is often critical of the red tape of government regulations, has said that this should cover businesses of all sizes and that the only exemption should be on the administrative burden, to which I have referred. The Government do not have the support of those who would allegedly benefit from the substantial exemption this order provides for.

There are other exemptions or potential exemptions which can also be queried. The noble Earl, Lord Lindsay, has spelt out comprehensively why the issue of oxo-biodegradable bags is not worthy of being considered as an exemption because of their knock-on effect on waste management and the reusability of plastics in general. Others have queried whether other sorts of bags that are being exempted should have that exemption. The big issue I refer to in that respect is: why should non-reused paper bags be excluded when they themselves have a very high carbon content and are a significant part of the litter around our towns and countryside?

Given, therefore, that there is now a general acceptance of this approach, and that the alleged beneficiaries of the exemptions do not seem to be in favour of the Government's position, why do the Government persist in doing this? Why, in particular, do they do so when the rest of the United Kingdom does not provide for those exemptions, or most of them, and when we may well be faced with a European directive at some point, which will probably not have those exemptions either?

[LORD WHITTY]

As I say, we should give at least two cheers for the Government for coming forward with this at last. Nevertheless, it is a pity that they have botched it a bit, and I hope that maybe they will fairly rapidly rethink this, and that, even if we adopt this statutory instrument today or when it is considered in the Chamber, they will come back and say, “Actually, these exemptions are pretty much a nonsense. Let’s make it straightforward so that everybody can understand it, and it will have the effect on everybody, whether they are a customer of a small or large business, whether they have a plastic bag or a paper bag, and whether they are in the country or the centre of our towns”. I hope that the Minister will take that at least as partial support, but some rethinking would be appropriate in his department.

Lord De Mauley: My Lords, I thank all noble Lords for their comments, but in particular I thank those noble Lords who have given at least the partial support that the noble Lord, Lord Whitty, offered. I will see how many of noble Lords’ questions and comments I can address, bearing in mind that our process may shortly be interrupted. However, I will see how far I can get.

The noble Lord, Lord Anderson of Swansea, asked why there had been a delay in getting to where we have. I know that I will not satisfy him entirely, and I suspect that he may have heard me say this before. However, I will say again that we carefully considered the situation and looked at the effect of the scheme in Wales to enable us to design what we considered to be the most appropriate scheme in England. As he knows, we first used voluntary industry initiatives to reduce bags, which proved successful up to a point. The other point it is worth making is that we needed to work with retailers to give them time to prepare. I know that I am not satisfying him entirely, but he will allow me to make that point.

He also asked what the purpose of an end date to the legislation is. It is standard practice from the perspective of Better Regulation to include a sunset date. It gives the Government of the day the opportunity to review the legislation to decide whether it is fit for purpose, and indeed to amend it if they wish to do so. Seven years is standard practice in that regard.

The noble Lord raised the exclusion of SMEs, as did a number of noble Lords. I am aware that some SMEs wish to be included within the scheme, but we have chosen to exempt small and medium-sized businesses from the charge to reduce the administrative burden on start-up and growing businesses at a time when we are supporting new growth in our economy. It is important to remember that the large majority of single-use plastic bags are distributed by the large retailers, and the seven major supermarkets gave out more than 7 billion of those bags in 2013. Small and medium-sized businesses are able to charge on a voluntary basis if they wish, and we have been told about some that already charge voluntarily and are generating significant financial benefits from a reduction in the number of bags they supply. I thoroughly encourage that. There is a requirement in the order for the system to be reviewed within five years, and the scope of the review will be set by the Secretary of State at the time,

but I am confident that the SME exemption will be one element of the policy that will be considered as part of that review.

The noble Lord, Lord Whitty, asked a related question. The impact assessment also states that there is an overall net benefit to society when SMEs are excluded from the scheme. The Government have therefore chosen to exempt them from the plastic bag charge to avoid placing an administrative burden on them at a time when, as I said, we are supporting growth in the economy.

4.45 pm

My noble friend Lord Lindsay suggested that the process was rushed. The details of the charging scheme were subject to a call for evidence, which was widely publicised, and we received 185 responses to the questions. The majority of the respondents supported the introduction of a charge on plastic bags. The summary of responses was published in June. In parallel, we received just over 2,000 emails on the broader shape of the charge, predominantly as part of NGO campaigns. We also used the evidence provided to the EAC and its report as an additional source of evidence in the development of the scheme. As well as ongoing engagement with retailers, the plastics industry and NGOs, we have held workshops with the British Retail Consortium and its members, and made some changes to the draft order, based on their feedback. We have also engaged with the Local Government Association.

My noble friend Lord Lindsay also asked: why would we proceed with an exemption for biodegradable bags when this might harm the recycling industry? We recognise the concerns regarding the separation of biodegradable bags from the waste stream. We seek to develop a standard that will take these needs into account. We have in hand research under the Small Business Research Initiative, including research into separation methods. My noble friend Lord Holmes asked about the same thing. We are keenly aware that we need to assess the impact on the recycling sector before introducing an exemption for biodegradable bags. We are looking to develop standards for a biodegradable bag that can be detected in the recycling stream.

My noble friend Lord Holmes and the noble Lord, Lord Whitty, asked about charging for paper bags. Plastic bags are prolifically distributed, take longer to degrade in the natural environment, can harm wildlife and are extremely visible when littered in our towns, parks and the countryside. Paper bags make up less than 0.1% of carrier bags distributed by major supermarkets and can biodegrade naturally over time in the open air.

My noble friend Lord Holmes asked where the revenue from the charge will go. How the proceeds from the charge are spent by retailers is a matter for retailers. The Government do not have the legal power to force retailers to use the proceeds in a particular way. However, we would expect them to donate the proceeds from the charge to good causes, after deducting reasonable costs. Many retailers have already confirmed to us that they will do this, and we will require them to

report on the number of bags charged for and how they have used the proceeds. This information will be made public.

The right reverend Prelate the Bishop of Chester asked about the exemptions in the order and whether they were the same as in other UK countries. My noble friend Lord Holmes asked a similar question. We looked carefully at the Welsh scheme but decided to put forward a scheme that is better suited to the local circumstances in England. We have therefore opted to exempt SMEs and paper bags, unlike in Wales and Scotland, and believe that it is better not to impose administrative burdens on SMEs. Paper bags are also not so widely used by the big supermarkets.

My noble friend Lord Ridley evidenced some scepticism over the figure of £780 million in the impact assessment. We have drafted a full impact assessment, which is available on the government website. It shows the expected impacts of the charge on consumers, businesses and others affected by it. Using the Government's standard procedures for these things, the total net impact of the scheme over 10 years is calculated to be a positive benefit of more than £780 million. That figure includes savings from reduced costs associated with littering and carbon dioxide-equivalent emissions.

The noble Lord, Lord Dubs, asked about a bag of oranges. I can tell him that bags used solely to carry unwrapped food are exempt from the charge.

My noble friend Lord Holmes and the noble Lord, Lord Whitty, asked how this fits with EU law and whether one can exclude one type of bag over another. In fact, our scheme fits very well and is compatible with EU law. Indeed, there is a current EU proposal to take action specifically on plastic bags. I hope I have addressed most if not all of noble Lords' questions. If I have not, I shall of course scrutinise *Hansard* and write to them.

The Lord Bishop of Chester: My Lords, will the Minister confirm for the record that biodegradable bags degrade into carbon dioxide from their carbon content?

Lord De Mauley: Yes, I am quite sure that the right reverend Prelate's chemistry is still current in that regard.

Lord Dubs: Perhaps I may ask a couple of questions. One is on unwrapped fruit. If one goes shopping, one normally buys a lot of things, including, say, four oranges. That means the shopping will be automatically exempt from the charge. That seems to be an inconsistency and, to my mind, not all that sensible. My other question is about publicity for the scheme. Surely one needs to encourage supermarkets to have publicity at the point of sale and wider so that people know what they are about. That will encourage people to take reusable bags.

Lord De Mauley: My Lords, my experience when buying oranges in the same way as the noble Lord, Lord Dubs, is that supermarkets tend to offer a very

light bag specifically for that purpose. We are talking about a very light bag, not one into which he could put the whole of the rest of his bottles and other heavy items. I hope I made that as clear as I can. He also asked about publicity and I entirely agree with him. We very much hope that retailers will do as he suggests.

Lord Dubs: I wonder whether we could all go shopping together because the noble Lord talked about a different world from the one that I inhabit when I do the shopping. It does not seem like that. Those little bags are still plastic.

Lord De Mauley: The noble Lord makes an almost irresistible offer.

Motion agreed.

4.53 pm

Sitting suspended for a Division in the House.

Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015

Motion to Consider

5.03 pm

Moved by Lord De Mauley

That the Grand Committee do consider the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015

Relevant documents: 17th Report from the Joint Committee on Statutory Instruments, 21st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley) (Con): My Lords, this is an order to be made under the Public Bodies Act 2011. As detailed in the explanatory document accompanying it, it delivers one of the outcomes of the Government's programme of reform for public bodies. The order will abolish the Advisory Committee on Pesticides and the equivalent body for Northern Ireland as statutory non-departmental public bodies. The Government will then establish a new expert scientific committee.

I wish to make it absolutely clear that this is not an attempt on the Government's part to stem the flow of impartial and independent scientific advice on pesticides—in fact, quite the reverse. We are very clear that the Advisory Committee on Pesticides has several strong features that must continue. These include: expertise, independence, impartiality, transparency, a direct line to Ministers, and the ability to initiate its own lines of inquiry. We will retain these qualities, but we see an opportunity to make improvements. I firmly believe that there will be benefits from the successor committee operating in a different and more flexible way, while of course retaining its independence.

We need new arrangements to reflect wider changes in the regulatory landscape for pesticides since the Advisory Committee on Pesticides was set up nearly 30 years ago. We need to establish a broader, more

[LORD DE MAULEY]

strategic and proactive role for the successor committee while meeting the continuing need for independent expert scientific advice in this area.

Over recent years, Defra has taken steps to improve its management of the wide range of scientific advice and evidence that underpins its work. As an expert scientific committee, the successor body to the Advisory Committee on Pesticides will work in a more co-ordinated and peer-reviewed environment. This is overseen by our chief scientific adviser and science advisory council. They do not interfere in the work of experts but provide valuable co-ordination, challenge and support.

We have consulted widely, as required by the Public Bodies Act, on the future of the Advisory Committee on Pesticides. As we have reported, there was clear support for our proposals. We also have the full support of other UK departments and the devolved Administrations. We have secured the required clearance from the devolved legislatures for the order. I believe we have gained this support because we acknowledge that these other parties have a strong interest in the future arrangements. We have worked closely with them and with the committee itself to draft the terms of reference for the new expert scientific committee. The input of the committee members is particularly important because they will transfer to the successor body.

The draft terms of reference have been discussed at two meetings of the committee and small but important adjustments have been made. These changes have satisfied members that the draft clearly sets out a shared vision of the independence of the committee, its right to initiate work and its right to communicate directly with Ministers. This text has now been put to departments for final agreement.

The Secondary Legislation Scrutiny Committee report on the order highlighted several issues to be captured in the terms of reference. These included addressing the comments by the Advisory Committee on Pesticides in the earlier consultation about independence and proactivity. It also mentioned the importance of the *Principles of Scientific Advice to Government* and the *Code of Practice for Scientific Advisory Committees*. The report also called for the establishment of escalation routes to ensure that advice from expert scientific committees can be submitted directly to Ministers, as appropriate.

In flagging those points, the Secondary Legislation Scrutiny Committee nevertheless concluded that the Government have demonstrated that the draft order serves the purpose of improving the exercise of public functions as set out in the 2011 Act, in line with the considerations contained in it. The committee was consequently content to clear the order within the 40-day affirmative procedure.

I am glad to be able to confirm that the issues raised by the scrutiny committee are all carefully and fully addressed in the draft terms of reference for the successor body. I can also confirm, as outlined earlier, that the members of the current Advisory Committee on Pesticides and all the relevant departments have been closely involved in this work. The existing Advisory Committee on Pesticides has provided real value over a number of years and the Government are determined to carry

over its strengths to the new body. However, the new structure will be more flexible and efficient. I commend the draft order to the Committee.

Lord Whitty (Lab): My Lords, I thank the Minister for spelling out the content of this order. Clearly, with the passage of the Public Bodies Bill—four years ago now—the authority to abolish this committee, provided the Government followed the appropriate procedure, has been there.

In Committee on the Public Bodies Bill, I queried the wisdom of abolishing this committee, and my noble friend Lady Quin queried it on Report. The significance of that for those who are not all that familiar with the history of Defra is that my noble friend Lady Quin was the last MAFF Minister to have responsibility for pesticides and I was the first Defra Minister to have responsibility for pesticides. We relied very heavily on the objectivity of the statutory committee, as well as the operations of the pesticides department—PSD—within Defra, because there are always some very difficult, if not controversial, issues arising about pesticides.

The difficulties and controversy have, if anything, increased in recent years. A number of bans at European level have been contested by the industry and some others in crop protection. There has recently been a serious disagreement between the Government and our European colleagues on neonicotinoids. There are always concerns for wildlife and, in particular, the bee population, the effects of various pesticides on them and therefore on their ability to fertilise a whole range of cultivated and wild plant life.

Within what is a no doubt objective and highly scientific area, there are quite often serious disagreements between experts. One of my main memories of my time as a Minister in this area was one huge row where—I will not go into the details—somebody was appointed to the committee whom the crop protection industry was not particularly keen on. It was always important to ensure a balance on the committee, with a range of people. Of course, that is quite difficult for government appointments. Almost everybody with a scientific background in this area, whether at university or in industry, has at some point in their career been employed or had their research sponsored by companies within the industry. It is therefore very important that transparency, accountability, independence—from industry as well as from government—and balance are clear in the advice that the Government receive.

Actually, the non-departmental public body requirements help to ensure that. My concern about the abolition of the committee was that we might lose that balance. The Government have gone through the correct procedures to ensure that there is understanding of the new way of carrying things out. I appreciate that and have every faith in the Government being very diligent in ensuring that that balance and independence are still there. They put it within a wider context where, effectively, this is an expert committee reporting to the science advisory council, which oversees the whole of Defra's scientific work. That makes sense to a degree, provided that that is well resourced and that the expert committees covering specialist areas maintain the balance and independence I referred to.

I accept the Government's good intentions within this area but they have to recognise that it is one where, publicly, media-wise and in the scientific community, controversy can jump out at Ministers who are without great expectation or, frankly, much knowledge of the balance of understanding on the scientific argument. That means the Government must be able to defend whatever future, more flexible arrangements are put in place. The Government refer to flexibility of advice. That should not be too ad hoc or Ministers would be open to the accusation that they have chosen the advice from those people most likely to favour their or the industry's position. That would be unfortunate in an area where a degree of objectivity has generally been respected over the years.

Pesticides used in our agriculture and horticulture have an important effect on the countryside, wildlife, bystanders, rural communities and the productivity and economic structure of our agricultural sector, so this is an important issue. I hope that the new arrangements work as well as the old ones. I dug out the latest annual report. It is clear from even the summary of the activity—where there were 12 important authorisations of pesticides, some more authorisations of equipment and some serious discussions about the regulatory regime of pesticides in that very year—that that intensity is unlikely to diminish.

5.15 pm

I appreciate the idea of having the overall science advisory council in place with the expert committees supporting it. I hope that the overall activity of Defra science will not be reduced—I was a little alarmed this very morning when I heard a media story about the effects of the cutbacks at Kew Gardens. Defra and MAFF have always had an important scientific role. Defra is important not only in the regulatory sense but in making sure that the evidence is properly financed and resourced in this area as in others. I am therefore taking quite a lot on trust in the proposition to abolish this committee, because, as the documentation logically states, we cannot set up a new committee until we have abolished the old one, so we do not know quite what the new committee or ad hoc committee will look like.

I hope that the Government will ensure that the new committee maintains the same high standards and recognises that Ministers and civil servants will need objective and independent advice, and that there is a substantial public interest that goes beyond the esoteric aspects of quite complicated science. With those remarks and those cautions, I welcome the Minister's presentation and do not propose to oppose the order.

Lord De Mauley: My Lords, I thank the noble Lord, Lord Whitty. I agree with him about the complexity of the issues that arise. He said that the intensity of activity is unlikely to diminish and I am sure he is right. I agree with him, too, that objectivity is crucial and I accept much, if not all, of what he said. We absolutely respect the need for that objectivity, for independence and for the transparency, accountability and balance that he referred to. I further agree with him that the effect of the Public Bodies Act should be to ensure that these qualities are safeguarded, but,

more than that, there is a strong will across government, both at ministerial level and—as has been strongly impressed on me—within the Civil Service and within Defra, to ensure that they are.

The noble Lord wondered whether there was a danger that scientific expertise might reduce and referred specifically to Kew. On Kew, we have seen in the press all the bad news that the Science and Technology Committee chose to air. If he was to review the detailed evidence that the committee heard, he would read the evidence from the Chief Scientist at Kew, who has completely rewritten its science strategy so that it is much more focused on Defra's business, to help us achieve what we want to do, and on the good that can be done for the country's biology and botany and so on. I think that the noble Lord would be hugely impressed with what they are doing at Kew, which reflects what we are trying to do elsewhere with our science.

The maintenance and even improvement, where possible, of our scientific advice are a top priority for me. I am grateful to the noble Lord for his words and I hope that the Committee will approve the order.

Motion agreed.

Human Transplantation (Wales) Act 2013 (Consequential Provision) Order 2015

Motion to Consider

5.20 pm

Moved by Baroness Randerson

That the Grand Committee do consider the Human Transplantation (Wales) Act 2013 (Consequential Provision) Order 2015

Relevant documents: 21st Report from the Joint Committee on Statutory Instruments, 25th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson) (LD): My Lords, the order was laid before this House on 21 January 2015 and is made under Section 150 of the Government of Wales Act 2006, which allows for amendments to be made to primary and secondary legislation in consequence of provisions made by an Assembly Act. The order is made as a consequence of the Welsh Government's Human Transplantation (Wales) Act 2013, which was passed by the National Assembly for Wales on 2 July 2013. I shall refer to this as the 2013 Act.

The 2013 Act changed the way in which consent for the purposes of transplantation is to be given for the donation of organs and tissue in Wales. From 1 December 2015, after death, a person's consent will be deemed to have been given in most cases, unless they had expressed a wish for or against donation. The notion of "appropriate consent" from the Human Tissue Act 2004, which I shall refer to as the 2004 Act, is therefore replaced by two concepts in Wales: "express consent" and "deemed consent".

[BARONESS RANDEKSON]

The order makes provision to amend the 2004 Act to allow for organs and tissue donated in Wales under the deemed consent regime of the 2013 Act to be used in transplantation procedures undertaken in England and Northern Ireland. It will also ensure that a person appointed to act as a representative for the deceased, under either the 2013 Act or the 2004 Act, will be recognised whether the transplantation activity takes place in Wales, England or Northern Ireland. Finally, the order also amends the Quality and Safety of Organs Intended for Transplantation Regulations 2012, to make reference to the deemed and express forms of consent that will soon take place in Wales.

In preparing the order, the Wales Office has worked closely with the Department of Health as well as the Welsh Government. We are all agreed that the provisions in this order are necessary to ensure that the new Welsh organ donation regime interacts with the existing regime in other parts of the UK. The order is therefore important to the UK. Without the order, when the deemed consent system comes into force in Wales at the end of this year, it would not be possible to use organs, tissue and cells donated under deemed consent in Wales for the benefit of patients in England and Northern Ireland. The order does not extend to Scotland. The Scottish Government have confirmed that no amendments are required to Scottish legislation for organs, tissue and cells taken under the deemed consent regime of the 2013 Act to be transplanted in Scotland. Deemed consent is not being introduced in England or Northern Ireland as a result of this order.

The order demonstrates the UK Government's continued commitment to work with the Welsh Government in order to make the devolution settlement work. I hope noble Lords will agree that the order is a sensible use of the powers in the Government of Wales Act 2006 and that the practical result is something to be welcomed. I commend the order to the Committee.

Baroness Finlay of Llandaff (CB): My Lords, I am most grateful to the Minister for the way that she succinctly introduced this important order.

I must declare an interest as president of the BMA. Since 1999, it has been BMA policy that we should move to what is often called an opt-out or deemed consent process. Indeed, I was also part of the move to create the opportunity for preferential donation to a relative in the event of there being a family member in need of an organ when there was a tragedy within that family. I understand from NHS Blood and Transplant that that is now being used approximately three or four times a year and actually working very well. My other interest is that I tried to introduce a Bill for a single kidney deemed consent, which did not get anywhere but did, I think, push the process further down the road.

The order is obviously important. We know that, every day in the UK, three people die waiting for a donated organ. The change under the 2013 Act should hopefully change the situation in Wales. But of course there is concern that Wales may become, if you like, a net donor of organs to the rest of the UK. My questions relate to that possibility.

First, what steps are the Government taking to increase the number of donors in England? Secondly, are the Government planning to review the Human Tissue Act 2004? Given that we now have these developments in the legislation in Wales, are the Government willing to facilitate an informed public debate about opt-out in England?

My other concern relates specifically to the cost, which will be borne by Wales. For the 2013 Act in Wales to work well, it will increase pressure on intensive care beds and it has been predicted that there will be a need to increase intensive care provision as a result of pushing up the number of donors and holding patients while the processes are gone through. That cost will be borne by NHS Wales. Is that increased cost going to be considered by NHS England and reimbursed in some way to NHS Wales? The cost-saving of somebody receiving an organ for transplant will be a cost-saving to NHS England, not NHS Wales. We know that there are significant cost-savings, quite apart from quality of life and life expectancy, if there is a successful transplant. I am grateful to the Minister for having met me and discussed this previously and understand that the cost of restructuring the donor register will be shared between England and Wales. But that is a one-off cost and will be quite small, whereas the relative cost to Wales for organs may be much higher and ongoing over many years, until such time as England and Northern Ireland follow suit.

Can the Minister also confirm that there will be no adverse effect on the use of organs donated in England, Northern Ireland or Scotland for patients in Wales if there is a very good match? Will the fact that we will have a different consent procedure, which will allow organs to go from Wales, also allow organs to come into Wales? That will become particularly important in paediatrics, where the size of the organ is important, as well as the tissue match of the organ.

Finally, last week I was privileged to host the signing of a memorandum of understanding between NHSBT and the MOHAN Foundation from India. The MOHAN Foundation has been working to push up the consent rate when families are approached and has done it very successfully. It has consent rates consistently over 60%, whereas in the black and minority ethnic community, particularly the Asian community—which has a very high demand for organs because of damage from diabetes; there are a lot of Asians on the transplant register awaiting transplant—the number of organs donated is remarkably low and at best hits 40% at times of agreement; in many areas it is much lower than that. Will the lessons that have been learnt over recruitment be supported and actively rolled out in a campaign aimed at those communities in England and Northern Ireland, but particularly in England, where the majority of those communities are, to make sure that the consent rate within those communities, where the genetic match would be much better, does go up, at least to equal the consent rate in the rest of England?

5.30 pm

Baroness Morgan of Ely (Lab): My Lords, I thank the Minister for outlining the order. The Welsh Government have for a long time rightly been concerned

about the number of people who have been critically ill and died while waiting for a suitable organ to be donated.

The UK as a whole has not had a great record in the past in terms of organ donors, and despite a huge push by the Organ Donation Taskforce to increase significantly the number of donors, the UK continues to have one of the highest family refusal rates in Europe. After detailed research and investigation, the Welsh Government decided to change the law in Wales, as the Minister outlined, so that the public were deemed to have given their consent to use their organs unless they had opted out of the system. Obviously, there are exceptions to this and these are outlined in detail in the Human Transplantation (Wales) Act.

The rights and wrongs of whether it is a good idea to have this system of presumed consent are not under scrutiny today, although I agree with the noble Baroness, Lady Finlay, that it is worth looking at how successful this is going to be in Wales. Of course, this is a matter on which the Assembly has decided to legislate. My understanding is that the need for this SI is due to the fact that Wales is anxious—correctly, in our view—to ensure that there will continue to be a cross-border flow of organs and tissues across the UK. The change proposed means that organs from Wales will continue to be able to be used in England and Northern Ireland. It is worth noting, as the Minister pointed out, that the law does not need to be changed in relation to Scotland.

I would like to underline some of the points made by the noble Baroness, Lady Finlay. If Wales is introducing this, presumably we are proportionately going to be doing more heavy lifting in terms of organ donation than the rest of the country. That is good—we in Wales are helped out by the rest of the country very often—but as the noble Baroness, Lady Finlay, underlined, there is a cost to this and it would be useful to know whether there will be an additional contribution from the NHS in England. Has any negotiation been undertaken with NHS England in terms of additional help as a result of that cost? We know that Wales could do with the help in financing the NHS.

The Labour Party is in agreement with this order and we give it our support.

Baroness Randerson: My Lords, I thank the noble Baronesses, Lady Finlay and Lady Morgan, for their comments and for their support for this order. I will do my best to answer them in detail.

The noble Baroness, Lady Finlay, asked about preferential donation. As she knows, with her considerable expertise and experience, organs are donated unconditionally and allocated to sick patients on the basis of their clinical need. You cannot name an individual or individuals to whom you would like your organs donated when you join the NHS donor register, but a requested allocation could be possible at the time of your death if there was someone close to you who was waiting for an organ transplant. The noble Baroness made reference to a potential increase in the number of donors as a result of the deemed consent system. On the basis of statistical probability, approximately 15 extra donors a year are likely to

become available. Donors tend to donate several organs, so it is estimated that this would help between 45 and 60 recipients.

There has been a considerable increase in the efficiency and co-ordination of organ donation and transplants in recent years, partly because of the efforts that the Government have made to increase the number of organs available. There is a commitment to ensure that organs continue to flow across the border; indeed, the whole purpose of this order is to ensure that that continues. I know that the Welsh Government are committed to that, as are the UK Government.

The noble Baroness, Lady Finlay, asked what England is doing to increase the number of donors. Since 2008 and up to April last year, there was a 60% increase in the number of organs donated in the UK and a 47% increase in transplant rates. That is significant progress, although the UK Government firmly acknowledge that there is more to be done. A new, seven-year UK-wide organ donation and transplantation strategy was jointly published by the four UK Health Ministers and NHS Blood and Transplant in July 2013. I hope that this reassures noble Lords that the Government are committed to working closely with the three devolved Governments and to increasing consent rates.

The UK continues to support work to increase donation and transplantation rates further, particularly promoting collaborative work among organisations to raise awareness of donation in the black, Asian and minor ethnic populations. The noble Baroness made reference to that. I was interested and pleased to see in the Commons Lobby yesterday a stall from Transplant 2020, with literature and an expert clinician available to encourage Members of this House and of the other place to sign up but basically to discuss the issues associated with organ transplantation. The literature given to me referred to the need for greatly improved rates of organ donation among BME communities.

The noble Baroness asked whether the UK Government would move in any way towards a similar scheme, or discuss that. I think we would all acknowledge that the debate in England is at a much earlier stage than the debate in Wales, which has gone on for a significant number of years and has been subject to very wide consultation, but I can commit to the fact that the UK Government will look closely at the impact on donor numbers of the work that Wales has been undertaking.

The noble Baronesses, Lady Finlay and Lady Morgan, referred to costs. The increase in the number of beds required will, I am told, be minimal, and the Act will not increase the need for critical care beds. The increase in the number of donors will pay for itself over 10 years because the organ donation system is efficient and reduces hugely the costs of care for people suffering from organ failure. It will take some years for that to work through, but it is important to bear in mind that organ donation reduces the costs not only of healthcare but of social care in many cases, as well as the impact on families and the individuals concerned.

The noble Baronesses asked what England will do to reimburse Wales for the increased costs of intensive care beds. Each UK hospital receives up to £1,000 for every donor or potential donor in order to help with

[BARONESS RANDEKSON]

intensive care costs. Discussions are already under way across the four countries on the best way in which to fund the increase in the number of donors and transplants.

I hope that with those comments I have satisfactorily addressed the concerns of both noble Baronesses, and I join them in the concerns that they have raised about the need to, by whatever method, ensure that we increase the number of donors and particularly concentrate on the two issues that they outlined—first, the high family refusal rates, which have proved to be extremely difficult to deal with, and, secondly, the low donation rates among BME communities. I commend the order to the Committee.

Motion agreed.

Protection of Freedoms Act 2012 (Northern Ireland) (Biometric data) Order 2015

Motion to Consider

5.45 pm

Moved by Baroness Randerson

That the Grand Committee do consider the Protection of Freedoms Act 2012 (Northern Ireland) (Biometric data) Order 2015

Relevant document: 22nd Report from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson) (LD): My Lords, I beg to move that the Committee should consider the draft Protection of Freedoms Act 2012 (Northern Ireland) (Biometric data) Order 2015, laid before the House on 29 January 2015. The main purpose of this order is to provide the Police Service of Northern Ireland with the ability to continue to use biometric data, including DNA, footprints and fingerprints, in the interests of national security and for the purposes of a terrorist investigation. The order also makes a transitional provision which permits the Chief Constable of the PSNI additional time to consider whether material held by the PSNI should be retained for an extended period for the purposes of national security, and makes some amendments to the Terrorism Act 2000 and to the Protection of Freedoms Act 2012. I shall refer to this as the 2012 Act.

The 2012 Act made new provision for the retention, destruction and use of biometric data taken in the course of a criminal investigation in England and Wales. The new provisions, which are now in force in England and Wales, require the destruction of biometric data of those individuals who have not been convicted of a criminal offence, subject to a number of statutory exemptions. Such new provisions were necessary in the wake of the judgment of the European Court of Human Rights in the case of *S and Marper v the United Kingdom*. In that case, the court ruled that the provisions in Part 5 of the Police and Criminal Evidence

Act 1984, which at that time permitted the “blanket and indiscriminate” retention of biometric data from individuals who had not been convicted of a criminal offence, violated Article 8 of the European Convention on Human Rights. The equivalent provisions relating to Northern Ireland, contained in the Police and Criminal Evidence (Northern Ireland) Order 1989, were thus similarly considered to violate Article 8.

The 2012 Act did not provide for an equivalent new biometric retention framework for the police in Northern Ireland. While the Northern Ireland Department of Justice sought a legislative consent Motion from the Assembly for the inclusion of Northern Ireland-specific clauses within the 2012 Act, this was not granted. This was largely because the majority of the provisions to be made had by then fallen into the devolved space following the devolution of policing and justice to the Northern Ireland Assembly in April 2010. The devolved Administration therefore took forward a separate but broadly similar provision to that contained in the 2012 Act. This was done under the cover of the Criminal Justice Act (Northern Ireland) 2013. I shall refer to this as the 2013 Act. It was recognised, however, that the Northern Ireland Assembly did not have the legislative competence to make provision in the excepted field, in particular to permit the biometric data obtained under the PACE NI order to continue to be used for national security purposes and in terrorist investigations.

An order-making power was therefore inserted into Part 7 of Schedule 1 to the 2012 Act to allow the Government to make excepted provision regarding biometric data in Northern Ireland. This power was consequential on the devolved Administration making similar provision to that contained in the 2012 Act by the end of 2012. In the event, it was the following year before the devolved Administration’s Bill containing the equivalent provision received Royal Assent, in the 2013 Act. It was therefore necessary to amend the order-making power in the 2012 Act via primary legislation. That was done in the Northern Ireland (Miscellaneous Provisions) Act 2014, which received Royal Assent in March 2014.

An amendment to the 2013 Act is currently being taken through the NI Assembly via a separate Bill. The devolved Administration advises that this amendment is necessary to prevent the inadvertent requirement to destroy a large volume of material which was intended to be capable of retention. It is expected that that Bill will receive Royal Assent by this summer, following which the provisions in the 2013 Act will be commenced. This order will be brought into force on the same date that the provisions of the 2013 Act are commenced. That is in order to avoid any gap arising in the powers of the PSNI to retain biometric data for national security purposes or in terrorist investigations.

Following the approach for England and Wales in the 2012 Act, paragraph 6 of Schedule 1 to the 2012 Act provides for the making of a “national security determination” by the chief constable of the PSNI in respect of the biometric data of a given individual. That allows the material to be retained for up to two additional years for the purposes of national security. The order provides for a transitional period during which the new destruction regime will not take effect

in respect of material identified as requiring consideration as to whether it should continue to be held for national security purposes. That is to allow the chief constable of the PSNI sufficient time to consider whether to make a national security determination in respect of such material. The provision permitting the chief constable of the PSNI to make the national security determination is not yet in force, but will be commenced by order later this year on the date identified for the commencement of the new destruction regime in Northern Ireland.

The Biometrics Commissioner, appointed under Section 20 of the 2012 Act, will have an important oversight function in that connection. The commissioner will have the power to review every national security determination made by the chief constable, and will be empowered to order the destruction of any material made the subject of such a determination if he concludes that it is not necessary for the material to be held on the grounds of national security.

Finally, the order makes two minor consequential amendments. First, paragraph 15 of Schedule 8 to the Terrorism Act 2000 is amended to ensure that the correct definition of the term “sample” is adopted in relation to the use of police powers under the Act. Secondly, the order removes some remaining references in Schedule 1 to the 2012 Act to samples and profiles which are redundant in consequence of the 2013 Act.

Part 7 of Schedule 1 to the 2012 Act provides my right honourable friend the Secretary of State for Northern Ireland with an important order-making power. With this order she duly exercises that power to ensure that the PSNI remains able properly to investigate terrorist offences and make use of biometric data in the interests of national security. Moreover, the provisions of the order are a vital part of the new legislative framework, which is necessary to secure the Government’s compliance with our obligations under the European convention. I commend the order to the Committee.

Lord Empey (UUP): My Lords, the complicated nature of the order that the Minister just outlined to us illustrates that it operates at the twilight zone between the accepted and the devolved matters. Of course, the fact that both are going at a different pace makes matters even more complicated. Nevertheless, we understand that this flows directly from an ECHR ruling and we must deal with that.

Can the Minister assure us on one point? Many members of the public frequently become concerned if there is a risk that material that could subsequently find its way into the evidential process will be disposed of prematurely. We now know of cases emerging many years after offences were committed. We see that on a regular basis and, as the noble Baroness knows, the Historical Enquiries Team is about to commence more work—just as it has previously operated, going back over very difficult terrorist cases. Of course, sadly, in the current circumstances in the modern world, many risks to national security come from all sorts of directions, and not ones that we have been used to traditionally in this part of the world. Therefore, there is quite a significant issue here. I would like the Minister to assure the Committee that the risks posed to successful prosecutions will not be significant and that there are

sufficient powers available to ensure that appropriate material is retained in the reasonable prospect that further evidence would justify a prosecution.

The Explanatory Memorandum also raises a number of issues that affect the Police Service of Northern Ireland, not least of which is cost. I refer to paragraph 10, on impact. It says that there is,

“a cost to the PSNI in configuring computer systems for their use in managing the new regime and in staff training”.

Are sufficient resources available to the PSNI to undertake this work? The Minister will know that the PSNI has faced a very difficult budget settlement. We understand the reasons for that but the work that must be undertaken by the PSNI is, far from reducing, at a very significantly high level. That is not simply because of the ongoing terrorism threat. There are other threats out there, for example through smugglers and illicit trade.

I am pleased that at long last, after a two and a half year delay, the National Crime Agency will function in Northern Ireland. However, there is clearly a cost and resource issue here. It is not only cost. Part of the problem that the PSNI faces is that it has so many people working on historical cases and also an ongoing terrorist threat level that the Chief Constable described as “severe”—it is certainly substantial. He will have to review every piece of evidence and that is a massive piece of work. If officers’ time is taken up with that, with training and so on, there is a resource implication. Can the Minister assure the Committee that the effectiveness of the PSNI is not going to be diminished as a result of the substantial workload that is going to be forced upon it?

I hope that the Minister will address one other matter. Can she explain in a little more detail paragraph 12 of the Explanatory Memorandum covering the monitoring and review process:

“An independent Biometrics Commissioner has been appointed to keep under review the retention and use by the police of DNA samples”?

Given the fact that the role of the commissioner is currently limited to the oversight of the making of national security determinations, can the Minister elaborate on how this process is going to operate under the new circumstances?

In summary, the necessity for this has been more or less forced upon us as a result of the court ruling, and of course even though the legislative framework is different in England and Wales from Northern Ireland, the case has the same effect as it would have under the different legislation that exists in Northern Ireland. Those are the issues and I would appreciate it if the noble Baroness would address them in her response.

6 pm

Lord McAvoy (Lab): My Lords, I thank the Minister for her exposition of the order and the staff in her office for keeping me informed. This is another sensible step, albeit that it may be forced on us, in the devolution process that was first started by a Labour Government. Anything that arms the PSNI and the forces of law and order with the necessary requirements to combat potential acts of terrorism can only be welcomed. I want to make it clear that the Official Opposition welcome this addition to the PSNI’s powers. This

[LORD McAVOY]

order does not deal with national security outwith the legislative context of the Northern Ireland Assembly, but it does bring the PSNI into line with other forces. The ability to use evidence that is gathered is particularly useful.

I echo the comments made by the noble Lord, Lord Empey, about the potential costs and use of resources. We all know that the budget of the PSNI is under considerable strain, especially given the circumstances in north Belfast. There are reports that the efforts of some of the historical inquiry teams have had to be reduced or abandoned because of a stated lack of resources. I assure the Minister that we will be paying particular attention to this because any weakening in the resources available to the PSNI makes it less able to tackle potential acts or planned acts of terrorism. However, despite the problems around the need for this order, we welcome and support it.

Baroness Randerson: I thank noble Lords for their comments and their support in principle for the order. The noble Lord, Lord Empey, asked whether there was a risk that biometric data that could still lead to the conviction of those who have not yet been brought to justice for their crimes might be destroyed. The purpose of the order is to allow the PSNI to continue to use biometric data in the interests of national security or for the purposes of a terrorist investigation. It does not impose any destruction requirements on the PSNI.

The Criminal Justice Act (Northern Ireland) 2013, which was of course debated and approved by the Assembly, provides for the exemptions to the legal requirement to destroy an individual's biometric data that have been introduced in response to the Marper judgment. During the Marper case, the European Court of Human Rights rejected the argument that the indefinite retention of biometric data was justified for the purposes of preventing crime. The court ruled that the blanket and indefinite retention policy of the UK did not strike the appropriate balance between public interest and the rights of the individual. The noble Lord will know that we are bound by that judgment.

Both the noble Lord, Lord Empey, and the noble Lord, Lord McAvoy, referred very rightly to the issue of resources. As the purpose of the order is to allow the PSNI to continue to use biometric data in the interests of national security or for the purposes of a terrorist investigation, no resource burden is imposed by virtue of the order that is before the Committee. However, the implementation of the new legislative regime for the retention of biometric data, provided for by the Criminal Justice Act (Northern Ireland) 2013, has of course created a significant resource burden, as is noted in the Explanatory Memorandum, which noble Lords have referred to. It has been necessary to allocate resource to reviewing all biometric data currently held by the PSNI, the configuration of IT for their use and staff training. This is an inevitable consequence of the ruling of the European Court.

The noble Lord, Lord Empey, asked about the mechanisms to be put in place to ensure the oversight of police retention of biometric data, which is not

subject to the destruction requirements. The independent Biometrics Commissioner, to which the noble Lord referred, will have the power to review the making of every national security determination, including those made by the chief constable of the PSNI. If the commissioner is not satisfied that the retention of any material is necessary on national security grounds, he can order the material to be destroyed. The Biometrics Commissioner's first annual report was laid before Parliament in November 2014. In his report, the commissioner reveals that relatively few national security determinations relating to England and Wales, where his powers currently lie, have been received by his office to date.

I hope that those responses are helpful to noble Lords. I commend the order to the Committee.

Lord Empey: Will the Minister clarify one point for me? Is she saying that, if the chief constable designates a "sample" as one that is essential, in his or her view, for anti-terrorism or national security purposes, that protects the sample from the ruling of the court, subject to the oversight of the commissioner? Is that effectively where we are?

Baroness Randerson: The short answer is yes; that is the process. The chief constable makes the decision and it is reviewed by the commission.

Motion agreed.

Scotland Act 1998 (Modification of Schedule 5) Order 2015

Motion to Consider

6.10 pm

Moved by Lord Wallace of Tankerness

That the Grand Committee do consider the Scotland Act 1998 (Modification of Schedule 5) Order 2015

Relevant document: 22nd Report from the Joint Committee on Statutory Instruments

The Advocate-General for Scotland (Lord Wallace of Tankerness) (LD): My Lords, this draft order will devolve competence to the Scottish Parliament so that it can enact legislation about certain safety measures in relation to all dedicated school transport in Scotland. I will give the Committee a brief explanation of how the draft order achieves this and why it is felt to be an appropriate and sensible use of the powers under the Scotland Act 1998.

The draft order is made under Section 30(2) of the Scotland Act 1998. Section 30(2) provides a mechanism whereby Schedule 4 or Schedule 5 to that Act can be modified by an Order in Council, subject to the agreement of both the UK and Scottish Parliaments. I am sure the noble Lord, Lord McAvoy, will recall that we debated a similar order on the Floor of the House last week.

The draft order will amend Part 2 of Schedule 5 to the Scotland Act 1998 to make an exception to the road transport reservation in Section E1 of Schedule 5 to that Act. The amendment will devolve power to the Scottish Parliament to legislate in relation to the regulation

of the description of motor vehicles, by reference to their construction and equipment, which are used to transport pupils and students in Scotland to and from places where they receive education or training, such as schools and colleges.

There is an ongoing petition before the Scottish Parliament's Public Petitions Committee that calls for provision to be made to ensure that every school bus in Scotland is installed with three-point seatbelts for every school child passenger and to ensure that proper regard is given to the safety needs of the children. Although it is the Scottish Government's current position that the specific terms of dedicated school bus contracts are matters for individual local authorities, in an approach consistent with the petition I have just mentioned, Scottish Ministers have indicated that they intend to introduce legislation with the aim of ensuring that it becomes a requirement for seatbelts to be installed on all dedicated school transport in Scotland. This order will confer legislative competence on the Scottish Parliament to allow them to do so.

Once again, the order demonstrates the Government's continued commitment to working with the Scottish Government to make the devolution settlement work. I hope the Committee will agree that this order is a reasonable use of the powers in the Scotland Act 1998. The draft order has passed Committee stage in the Scottish Parliament and we expect that Parliament to conclude its scrutiny by 19 March 2015. The other place is expected to consider this draft order in two weeks' time. I commend the order to the Committee and I beg to move.

Lord McAvoy (Lab): My Lords, I thank the Minister and his staff for making sure that I was kept informed. He mentioned last week's debate on the Floor of the House. Perhaps in future he should consider a joint invitation to the noble Lord, Lord Forsyth of Drumlean, to come along and liven up the proceedings. That would probably put the Minister in the position that he would expect—and get—the Labour Party to ride to his rescue, as we did last week.

The Minister is absolutely right: this is continuing support for the devolution settlement, which I am glad the current Government are continuing. He has outlined it. There is no need to go over it again. We support the order.

Lord Wallace of Tankerness: My Lords, as ever, I am grateful for the noble Lord's support.

Motion agreed.

Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015

Motion to Consider

6.14 pm

Moved by Lord Wallace of Tankerness

That the Grand Committee do consider the Courts Reform (Scotland) Act 2014 (Consequential Provisions and Modifications) Order 2015.

Relevant document: 20th Report from the Joint Committee on Statutory Instruments

The Advocate-General for Scotland (Lord Wallace of Tankerness) (LD): My Lords, the main purpose of the order is to give full effect to the Courts Reform (Scotland) Act 2014, which I shall refer to as the 2014 Act, and to make provision where the Scottish Parliament does not have the legislative competence to do so.

The order is made under Section 104 of the Scotland Act 1998 and makes necessary or expedient legislative changes in consequence of the 2014 Act. It is quite technical in nature. It maintains the status quo and ensures that courts in Scotland retain their specific powers in relation to devolved and reserved matters.

To provide noble Lords with some background, the 2014 Act implements the majority of the recommendations of the Scottish civil courts review of 2009, which was an independent review chaired by Lord Gill. As the Committee may know, Lord Gill was at the time of the review the Lord Justice Clerk of Scotland and is now the current Lord President of the Court of Session.

The 2014 Act is intended to make the civil justice system in Scotland more efficient, with most of that Act focusing on a restructure of the civil courts system in Scotland. The 2014 Act makes some additional provisions relating to criminal matters.

From 1 April this year, the functions of the Scottish Tribunals Service will be transferred to the Scottish Court Service as a result of provision within the 2014 Act, and that Act will rename the Scottish Court Service the Scottish Courts and Tribunals Service. It is intended that this transfer will protect the independence of the administration of devolved tribunals by separating it from the Scottish Government. It will also create a joint independent administration for both courts and tribunals, with one board chaired by the Lord President as head of the judiciary for both courts and tribunals.

The Pensions Appeal Tribunal for Scotland, or PATS, was established under the Schedule to the Pensions Appeal Tribunals Act 1943. While pensions are a reserved matter, PATS is currently administered by the Scottish Tribunals Service, since the non-statutory function of providing administrative support was executive devolved to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999. The order before us transfers the administration of PATS from Scottish Ministers to the Scottish Courts and Tribunals Service.

Section 2 of the 2014 Act updates existing powers to alter sheriffdoms and sheriff court districts in Sections 2(1) and 3(2) of the Sheriff Courts (Scotland) Act 1971. The order consolidates and re-enacts the compensation provisions in those sections and permits the Scottish Courts and Tribunals Service to pay compensation for loss of office or loss or diminution of emoluments in consequence of an order made under Section 2 of the 2014 Act.

Currently, the Court of Session may make rules to regulate procedure and fees in both the Court of Session and the sheriff court, and it is important that the Court of Session still has this ability both for reserved matters and those which are devolved. The principal powers under which these rules are made are contained within the Court of Session Act 1988 and

[LORD WALLACE OF TANKERNESS]
the Sheriff Courts (Scotland) Act 1971. As powers which were conferred on the court by pre-devolution statutes, these rule-making powers cover both reserved and devolved matters. This means that the court has been able to make special rules governing practice and procedure in relation to reserved areas of the law such as immigration, financial services and terrorism.

The court's rule-making powers are now to be contained in the 2014 Act, but, because of the current legislative competence arrangements, that Act can provide the rule-making power only for matters which are devolved. Accordingly, the order provides that these powers may be used to make provision which relates to a reserved matter, or which modifies the law on reserved matters; that is, provision modifying existing special rules relating to reserved matters. This preserves the pre-existing ability of the court to regulate practice and procedure regardless of whether the subject matter of the proceedings in question is devolved or reserved.

While the 2014 Act provides for the Lord President of the Court of Session to direct certain categories of sheriff court case as suitable to be dealt with by specialist judiciary, and for the Lord President or the sheriff principal of a sheriffdom to be able to designate particular members of the sheriff court judiciary as specialists in one or more areas, the order provides for these powers to be exercisable in relation to categories of case which relate to reserved matters.

Similarly, while the 2014 Act inserts new sections into the Court of Session Act 1988 to include the application of a second appeals test applying to applications for review of decisions of the Upper Tribunal for Scotland, the order extends these provisions to apply to the UK Upper Tribunal.

The 2014 Act provides that civil proceedings which a sheriff has competence to deal with, and in which orders of value are sought of an aggregate value which does not exceed £100,000, may be brought only in the sheriff court. However, this order prevents the 2014 Act applying to proceedings for the winding-up of a company, with the consequence that such proceedings will remain competent in the Court of Session regardless of any order for value sought.

Finally, the order makes consequential modifications to existing UK legislation. For example, the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 are each amended to reflect the abolition of the office of stipendiary magistrate and the introduction of new judicial offices of summary sheriff and part-time summary sheriff in the 2014 Act.

A further example of the consequential modifications made by the order is that, as the 2014 Act has repealed several pieces of legislation in so far as Scots law is concerned, it replicates these repeals for the rest of the UK, thus tidying up the UK statute book. A specific example of this is the repeal of the Judicial Offices (Salaries, etc.) Act 1952 by the 2014 Act. This order replicates those repeals for the rest of the UK.

I consider this order to be a sensible use of the powers under the Scotland Act 1998 and it once again demonstrates this Government's continued commitment

to working with the Scottish Government to ensure that the devolution settlement works. I therefore commend the order to the Committee. I beg to move.

Lord McAvoy (Lab): Again, I place on the record my thanks to the noble and learned Lord and his staff for keeping me fully informed. It is with trepidation that I set foot in a Room when an order mentioning emoluments and compensation for legal people is being discussed. I am not that brave and prepared to tread that ground too much.

The noble and learned Lord says that is sensible devolution. It is a steady process that is working well and, on behalf of the Opposition, I fully endorse the order.

Motion agreed.

Independent Schools: Variety and Diversity

Question for Short Debate

6.22 pm

Asked by Lord Lexden

To ask Her Majesty's Government what assessment they have made of the variety and diversity of schools within the independent education sector.

Lord Lexden (Con): My Lords, I begin by declaring my interests as president of both the Independent Schools Association and of the Council for Independent Education.

The association provides a range of excellent services to its expanding membership—up from 300 thriving, mainly smaller schools, averaging under 400 pupils a few years ago to some 360 today. The council brings together 18 independent colleges, helping them to enhance their already high standards, which will be on display in your Lordships' House next week when I present annual awards to the most successful students drawn from all manner of backgrounds within this country and overseas. They look to the Government for one thing above all—the removal of unnecessary obstacles to student visas. Many independent schools feel equally strongly about that.

There are a number of other highly regarded professional organisations working on behalf of the 1,250 schools which have chosen to join them on terms that include regular inspection and published reports under Ofsted's watchful oversight. I encountered an array of those well-established bodies during my time as general secretary of the Independent Schools Council between 1997 and 2004. With misplaced radicalism at the beginning of my tenure, I urged them to coalesce so they could speak with a united voice—not least to the Government of Mr Blair. I had no success. The organisations that represent independent schools reflect the innate diversity and variety, which are the hallmarks of the schools themselves, where 80% of the 625,000 pupils in the independent sector are educated. Yet those long-standing characteristics go almost entirely unremarked, and it is my object in this debate to underline their importance.

I am grateful to those noble Lords who will be taking part. This is a short debate. I regard it as opening salvo, and I hope to have other opportunities to carry forward and enlarge the discussion of issues relating to independent schools. It is in the national interest to do this.

I am sorry that my noble friend Lord Nash, who has taken a deep and constructive interest in these issues, cannot reply to this debate on behalf of the Government because of duties in Birmingham. I am very grateful to my noble friend Lady Williams of Trafford for speaking in his stead.

My starting point is the extraordinary collection of misconceptions that dominate discussion of independent schools—in the media, in politics and over the dinner tables of the chattering classes. It is a long-standing national habit to view all independent schools as aloof, expensive and exclusive, barred to almost everyone in the land. The impression is now gaining ground that the cost has become so great—around £30,000 a year is the widely quoted figure—that soon only Russian oligarchs will be able to afford them. This takes to extreme lengths a misapprehension that has a cause as simple as it is difficult to dispel: a stubborn determination to regard all independent schools, of which there are more than 2,500 in total, as having been created in the image of a handful of famous public schools, which for some 150 years have been accused of occupying central and malign roles in creating and sustaining deep social division in our country. The famous picture taken of the Eton-Harrow cricket match in 1937 of two Harrovians in top hats being stared at derisively by three urchins is still used to illustrate innumerable articles about independent schools, despite being totally out of date and wholly unrepresentative.

I will not in this debate enter into the tempting historical argument as to whether the grave charge laid against the major public schools is true but I emphasise it as the factor that has done most to create the wholly misleading impression that is so rife today. An imaginary uniformity is attributed to independent schools. The variety and diversity that are their actual attributes have been lost to sight. Consider the question of fees—understandably, everybody does. It is perfectly true that places in boarding schools can be costly. Superb facilities are provided in return. But boarders represent only one in eight pupils. Far from being typical, very expensive schools are the exception. In some day schools in the Independent Schools Association, fees are at a level similar to the average cost of a place in the maintained sector, which makes many heads yearn for the introduction of an open-access scheme to their schools at every level of ability.

More than half of independent schools are not academically selective. Every year, means-tested bursaries increase. Over a third of pupils now receive help with their fees. Every year more pupils from ethnic minority families begin their education at independent schools. A higher proportion of ethnic minority pupils are in independent schools in England than in maintained schools. Many teachers seek to reach out as fully as possible to the communities around them. I think of a remarkable little school outside Lichfield where I presented prizes last summer. Maple Hayes Hall School has a

superb track record of helping children with learning difficulties. The chairman of the local council described it last week as a jewel in the district's crown, yet the local education authorities go to considerable lengths to try to prevent parents of statemented children from sending them to Maple Hayes, precipitating lengthy and expensive cases before tribunals. Such behaviour, inimical to the interests of the children of this country, really should end.

The independent sector has in this generation committed itself fully to partnership with state schools. The further development of partnership is the theme of the manifesto that the Independent Schools Council has published for the coming election. A proper understanding of what independent schools have to offer by way of full partnership can be achieved only by recognising and relishing the diversity and variety that exists within the sector. How can this be done? One way would be through a careful survey of members of the Independent Schools Association by an impartial education expert or an education journalist or two. The idea was enthusiastically received by many of the heads of the schools when I put it to them last week.

Emails have poured in, giving a foretaste of what those carrying out such a survey might expect. I will give a few examples.

At Gosfield School in Essex,

“we halved our prep school fees three years ago and provide substantial bursary support to families in the local community”.

At Babington House School in Chislehurst,

“we accept pupils from a variety of backgrounds, some of whom have very significant and particular needs. We are not a rich school and have no large endowments, but nevertheless we provide a number of means-tested bursaries”.

At Moon Hall College in Reigate,

“virtually all our pupils come to us having failed to achieve their potential in a mainstream school despite additional support. Many are still virtually illiterate when they arrive but they leave us full of confidence, having taken their GCSEs and been admitted to sixth-form colleges”.

At Claires Court School in Maidenhead, academic selection is totally rejected as,

“harmful to social mobility and the long term development of all children”.

At Thorpe Hall School in Southend,

“operating in a highly selective 11+ area with four huge grammar schools, we educate many pupils who did not get through that filter but would not thrive in a large comprehensive”.

At Brockwood Park School, in Bramdean,

“young people from diverse nations and cultures share the adventure of growing and learning together, and will be less likely as adults to engage in discriminatory prejudice”.

At Tring Park School for the Performing Arts,

“awards in the region of £650,000 (10 per cent of turnover) are made each year for drama and musical theatre scholarships and bursaries”.

At Thames Christian College,

“the vast majority of pupils come from families who would never have thought they would ever send their children to a private school; around 40 per cent of our pupils do not pay the full fees”.

I have been sent many more such snapshots of the variety and diversity of life in independent schools today. I have not even mentioned the wide range of activities undertaken by schools in their local communities

[LORD LEXDEN]

which show up as risible the patronising comment made by the head of Ofsted last year that they represent no more than “crumbs from the table”.

Finally, I will quote the outstanding head of the James Allen’s Girls School in south London,

“an inner-city school where 50 home languages are spoken and we currently have 126 students who hold means-tested bursaries. We regularly send girls from under-privileged backgrounds and other under-represented groups such as Afro-Caribbean heritage to top universities”,

where, she adds, poignantly,

“they are at once officially classified as coming from a privileged independent school background”.

No one knows more about partnership with state schools than this most successful head, who has taken part in a large variety of collaborative schemes in recent years. She concludes, wisely, that,

“both sectors have a wide range of schools within them and neither one has the exclusive right to excellence”.

To that, I hope we will all say, “Amen”.

6.33 pm

Lord Hodgson of Astley Abbotts (Con): My Lords, I thank my noble friend for having given us the chance to debate this very important topic this afternoon and for the impressive way he has laid out the case for independent schools. Before I go any further, I need to make the Committee aware that I have in the past acted as a governor of one of the seven great schools that was the subject of the Clarendon Commission in the 1860s. Incidentally, that commission was set up because of allegations of bullying among pupils—what we would now call child abuse; plus ça change, plus c’est la même chose—and which led to the Public Schools Act 1868.

Secondly, and more relevantly, I was the official reviewer appointed by the Government for the Charities Act 2006, which of course brought me into direct contact with the issue of public benefit. My work on that review showed me the very deep roots the education system has in the charity sector. The oldest charity is the King’s School, Canterbury, founded in 597. I do not think it has a continuous record, but it can trace a thread through from 597 to the present day.

Up until the Middle Ages, the church—through the monasteries—helped the sick, looked after the disabled and provided education. The dissolution of the monasteries—*Wolf Hall* and all that—meant that private endeavour had to step in. If you look at the foundation dates of a number of our great schools, you will see that several were founded between 1530 and 1580. That trend was accentuated because during the later Elizabethan era there was substantial social unrest caused by inflation and bad harvests, which resulted in groups of poor people roaming the country. Noble Lords may recall the nursery rhyme that begins,

“Hark, hark, the dogs do bark. The beggars are coming to town”.

That comes from Elizabethan times and led to the great Statute of Charitable Uses 1601 on which our charity law is based. It had three purposes which were presumed to be charitable—the promotion of religion, the relief of poverty and the advancement

of education. That presumption remained in place for more than four centuries until it was abolished by the 2006 Act.

My noble friend has laid out an impressive case on behalf of the independent sector and I do not wish to repeat his arguments. However, I would argue that you are unlikely to strengthen the weak by weakening the strong; the independent sector has proved to be very strong and should therefore be encouraged. One of the greatest achievements of this Government has been to begin to raise standards in the state sector. That is the way we should be proceeding, so that the independent sector begins to feel the hot breath of competition. This will help all sectors and all our students from every background in every part of the country.

The independent sector is facing a couple of challenges. Independent schools are particularly concerned with the issues of variety and diversity which we are discussing. The first is what I call the facilities arms race, the wish for every independent school to have as far as possible the very best facilities, not just academic but sporting and artistic—music rooms, art schools and so on. This is a worthy aim, but it is an aim that comes at some cost and with implications for fees. Schools often say that the capital costs of such facilities are paid for by appeals to alumni and old members of the school, but this often overlooks the maintenance costs of the additional staff you have to hire to run the school and the inevitable need to maintain the buildings after they have been constructed. There is some concern that if this arms race continues, then gradually and imperceptibly fee levels will increase, which cannot be helpful or satisfactory to the sector. As my noble friend has said, we want to make sure that the sector remains open to as wide a proportion of our population as possible and we need to be mindful of the dangers and problems of what happens if we do not remember the squeezed middle.

There is a second aspect to this. The point was made in the briefing to us about the contribution made to the financial state of the country by individual schools from recruitment overseas. That is a fair point, but it is a point which can be taken too far. During my review, I met a very wise headmaster who said to me that, where you had 5% of students from overseas, that helped the school, but when it went above 10% it began to dissipate the school’s values and the school began to lose a sense of social cohesion. This challenge is particularly acute away from honeyed London and the south-east. During my review I travelled to schools in other parts of the country. The independent schools in London and the south-east have a wonderfully affluent and diverse pool of potential pupils to draw from. This is less the case when one moves west and particularly north where geographical distance begins to play a more important role and where schools are, in many cases, less well endowed or well supported than their south-eastern counterparts.

My final point concerns charitable status. In my review of the Charities Act it became very clear what huge advantages charitable status provided. Of course it concerns taxation and taxation privileges but, above all, it is reputational. The charity brand remains very

strong in the public mind. One of the principal conclusions of my review was that charitable status is a privilege, not a right, and privilege carries with it responsibilities. Some of these were referred to by my noble friend—to reach out to the wider community, to help educational establishments which are less fortunate or less well equipped, and to be humble enough to learn lessons from schools outside the independent sector and from society as a whole. These will be the continuing challenges for the independent sector and there can be no room for self-congratulation. Independent schools have been clever and flexible in reinventing themselves many times over the centuries. I hope and trust that that flexibility remains part of their DNA.

6.40 pm

Lord Storey (LD): My Lords, I thank my noble friend Lord Lexden for securing this debate and for the variety and diversity of his opening speech. I want to begin my contribution by reminding the Committee that independent schools teach only 7% of the country's school pupils, but the Debrett's 500 list reveals that more than 40% of the country's most influential figures went to fee-paying schools. Indeed, half of all noble Lords in the House have been privately educated, and more than 70% of our senior judges are former pupils of independent schools. The figures point out that independent schools are disproportionately dominant in their influence on today's society.

If we are to discuss diversity within independent schools, we need to examine what has changed where independent schools and social mobility are concerned. I remember that parents on low incomes could receive valuable scholarships, but now the focus is mostly on bursaries that seek to help families on lower incomes afford fees on a sliding scale. This represents greater access to independent schools. At this moment in time, over a third of independent school pupils are on these bursaries. It is safe to say that such schools cannot end social mobility problems alone—as I have pointed out, they teach only 7% of the country's school pupils—but I can only hope that if such monetary assistance continues, it is done in order to increase social mobility rather than to filter out gifted children from the maintained sector.

In my home town of Liverpool, there was an independent school called Liverpool College. The school principal decided to convert it into an academy, thus receiving public funding. The reason was that many parents wanted their children to attend but were unable to afford the fees. The benefits were reaped almost immediately. Pupils are admitted through random allocation, with some preference given to those who live within two miles of the school. Some students continue to board, but they pay less than 50% of what is charged by standard public schools, and their education is free. The demographics of the school are starting to shift; more pupils are eligible for the pupil premium, and more have been in care or come from ethnic minorities. The reason I brought up this example is that it highlights how the "greatness" of independent schools that traditionalists tend to emphasise can also be achieved in a state-funded school. Being able to expand the curriculum is what counts when seeking to

enjoy a fully rounded education, and this need not be compromised at non fee-paying schools, as Liverpool College demonstrates. It is true that schools have a lot more freedom when they are independent, but the standard of provision, imaginative teaching and the quality of teaching is not different between the sectors.

The next issue to which I wish to turn is a large and contentious one—partnerships between independent schools and state schools. Some 90% of ISC schools are in mutually beneficial partnerships with state schools and local communities, but I feel that this figure should really be 100%. However, enforcing such partnerships may cause legal and logistical problems. It may not be wise to take away schools' charitable status because treating schools as businesses would isolate them from society and work against our goal of partnership and collaboration. These partnerships can be encouraged, but they must be organic. Many London independent schools organise summer schools for primary schoolchildren in their local areas, including the loaning out of sports facilities and swimming pools, and teachers sharing resources and ideas to improve the quality of teaching. The list is truly endless. I am very glad that the DfE has agreed to fund 18 new partnerships and their start-up costs. This exchange of information allows the pupils to benefit from cross-sector wisdom and encourages a community spirit. Part of the discussion on diversity also invites a mention of transparency. It is no secret that independent schools receive charitable status, which can be considered a euphemism for tax breaks. These partnerships are a method by which private schools can earn that status.

As I mentioned earlier, the exchange of teaching methods is paramount to the quality of teaching, and this leads to my final point—innovation. We should of course note that innovation in schools is the product of a number of different things. Although evidence in this area is scarce, innovation is likely to be driven by evolving continuous professional development among teachers, employing teachers and school leaders from a wide range of backgrounds, guaranteeing flexibility in the curriculum and developing new technologies.

The case for for-profit schools rests on the concept that competition is the best driver of school improvement. The international evidence does not support this claim. The evidence on what works in improving school standards emphasises other factors: the quality of teaching, the need to reduce educational inequalities, and school autonomy—but only when coupled with sufficient accountability. The OECD's analysis of the PISA results for the past several years has suggested that schools that enjoy greater autonomy in resource allocation tend to do better than those with less autonomy. However, in countries where there are no such accountability measures, the reverse is true.

That innovation would therefore mean that independent schools' influence on maintained schools would be supplementary to state school education, as opposed to a necessity on which they depend. Therefore, it is not a rethink of any sort of hierarchy that we need, but a rethink of what are the most important tools for improving the diversity and variety of education and those who benefit from it.

6.46 pm

Lord Black of Brentwood (Con): My Lords, we should all be indebted to my noble friend Lord Lexden for giving us possibly the last opportunity in this Parliament to highlight the vital role of independent schools in the education sector and the contribution they make to civil society. Those of us who have had the good fortune to know him for many years, to have heard his erudite contributions in this House, and indeed to follow him on his remarkable website, know that the issue about which he feels most passionately is Ulster. But a very close second is independent education, a cause for which he has always been a formidable and authoritative champion.

I attended Brentwood School in Essex, where I received a first-class education that has been the foundation of all that I have done since. When I came to this House, one of the reasons I chose the title I did was because of my affection for my old school. I am now honoured to be a governor there, and I declare my interest accordingly. When I joined the school in 1971, it was a direct grant school. My parents could not have afforded to send me there otherwise. Direct grant schools were a very important part of our education system because in so many ways they neatly bridged the gap between the maintained sector and private education. I still believe that the abolition of direct grant status was a terrible act of educational vandalism.

But every cloud has a silver lining and for schools such as Brentwood, which were in effect forced into the private sector, independent status has proved to be of huge importance and value. The reason for that is this: genuine independence from the state and from the taxpayer has been the spur to innovation, and innovation has in turn been the engine of the diversity and variety that are the hallmark of the independent sector today. It is those three attributes that are the secret of success.

Your Lordships should think of it this way: independence means being judged every day on so many things—the standard of teaching, the provision of up-to-date facilities, the level of pastoral care, after-school activities, the quality of engagement with pupils and the effectiveness of communication with parents. Independent schools have to pass all those tests—and many more—every day or they fail. That so many of them are, like Brentwood, highly successful schools shows how effectively they meet these daily demands. As I said just now, crucial to that is the ability to innovate at the same time as preserving the tradition and heritage that are so valued by parents. Experimentation, original thought and the most up-to-date digital technology all sit alongside a respect for institutional history and custom, and a culture of excellence engrained over generations.

In this context, for a school like Brentwood, that means embracing systems such as the “diamond structure”, in which girls and boys are educated in single-gender groups from 11 to 16 and in a fully co-educational context post-16. It means championing a holistic approach to education, placing personal and social development, the importance of music, art, sport and community service alongside academic

achievement. And it means the ability to offer groundbreaking curriculum alternatives such as the international baccalaureate diploma programme as well as international GCSEs, the rigour of which have underlined the general problem of grade inflation. Indeed, it seems to me that the innovation of the independent sector in championing these alternatives has been one of the spurs to the changes in the examination system that have been a key part of the Government’s education reforms.

As my noble friend Lord Lexden reminded us, schools across the independent sector come in many shapes and sizes, with often radically differing ethos and organisation; but they share in common a great deal. I have already talked about their educational fervour, appreciation of the value of independence and the immediacy of accountability. Another thing they share is a commitment to a diversity of pupils from different backgrounds. More than 28% of pupils at independent schools are from a minority ethnic background, which is 1.5% higher than in the state sector. When I visited my old prep school recently, I was struck by the extraordinary range of languages other than English spoken. I heard in the course of a morning Polish, Romanian, Italian and Spanish—something that brings a rich cultural diversity and global perspective to young minds and outlooks.

Perhaps most vitally, all independent schools have done a huge amount over the years to make entrance to them accessible to anyone who really wants to get there. Direct grant status helped my parents, whose living came only from a shoe shop in Upminster, to get me there. Today, that opportunity comes from a very generous system of bursaries for families who have trouble finding the fees and which has become a hallmark of the sector. These bursaries have been built up by generations of philanthropists and former pupils. For many existing pupils, means-tested bursaries throughout the sector are worth an average of £7,984 per year. More than 5,000 pupils at ISC schools pay no fees at all. I say to my noble friend Lord Storey that he is absolutely right to talk about social mobility. That is one aspect of social mobility in action.

More than a century ago, my grandfather attended Christ’s Hospital—a school with a long and distinguished history of reaching out to families of modest means. Today, it offers more bursaries than any other independent boarding school with just under 80% of its 680 pupils receiving support, and 123 getting full fee remission. Last year, it spent £16 million on means-tested purposes, a staggering sum, showing how seriously it, in common with other independent schools, takes its wider civil obligations and its charitable status.

As well as bursaries to enable greater access to children of all backgrounds, independent schools reach out to the wider community. Some, such as my own school, extend a helping hand to maintained schools wishing to start, for instance, their own combined cadet force. Others offer specialist Oxbridge tuition and assist local authorities to teach subjects in which specialist teachers are in short supply. In all these areas, independent schools are using the variety and diversity—and indeed the excellence—among them to expand diversity and variety within the maintained sector.

I hope what this excellent debate will achieve is to highlight three things: first, that the independent schools of today are a light-year away from the image many in this House may have had of private schools in the past. As the noble Lord, Lord Hodgson, said, they have reinvented themselves, as they have done many times. They are modern, multicultural, diverse, home to cutting-edge digital technology and learning, and, above all, open to the gifted and ambitious whatever their background. Secondly, they take with the utmost seriousness the responsibilities from their charitable status, both through bursaries and wider community involvement. Thirdly and finally, as a result of their priceless independence from government, they add to the diversity and variety of our education system and, above all, of our society as a whole.

6.53 pm

Lord Lingfield (Con): My Lords, I begin by apologising to my noble friend Lord Lexden, and indeed to your Lordships, for arriving during his opening speech. I was inadvertently detained elsewhere. I thank my noble friend Lord Lexden for giving us this very important debate, and remind your Lordships of my education interests in the register.

Having worked in both private and state schools, I am an admirer—by no means an uncritical admirer—of the independent sector. My noble friend Lord Lexden has in the past pointed out that the majority of its schools bear no resemblance to those distinguished and well known boarding establishments that too often the press seems to imply epitomise the independent sector. The independent sector is extremely diverse and wide in its offering to parents. I want to refer very briefly to one aspect of its education provision, which is very different indeed from those famous schools before-mentioned and provides a superb service with very little fanfare—the independent special schools sector.

Under the previous Government, in the 10 years from 1997, some 9,000 special school places and 145 maintained special schools were lost in the state sector. That was because of a somewhat dogmatic application of the ideology of inclusion, which demanded that most children with special needs could be catered for in mainstream schools. I make no political point here, as all parties seemed to support this view at one time or other following the Warnock report. However, gradually common sense prevailed. Indeed, the noble Baroness, Lady Warnock, herself had many second thoughts. Inclusion can work extremely well for those with certain physical disabilities, but can too often lead to distress and a serious lack of progress in others.

By 2010, however, there was a net increase in the number of special schools as some 220 new independent ones had been founded to fill the gaps created by the closures. Typically, parents of children with particular special needs found that there was little provision for them and would form a small charity to take over the work. This was for most a hugely difficult task, and the parents concerned are much to be praised for their dedication and determination to do the best for their children and the children of others. However, many graduated from the rooms of private houses to find

proper accommodation as their pupil numbers grew. Persuading local authorities to pay the fees, or some of the fees, was difficult in some areas, but these schools flourished and today are a most important part of SEN provision. Today, there are some 550 of these schools in England, and Section 41 of the Children and Families Act 2014 allows the Secretary of State to publish a list of approved independent and non-maintained special schools and special post-16 institutions.

Department for Education figures show that some £612 million per annum is spent in placing children with SEN in these schools, which is 30% of the special schools placement budget. They vary in size, from the small institutions that I mentioned to large and long-formed charities, such as the wonderful Young Epilepsy's St Piers School in Lingfield, where I live, which was founded in 1904 and provides 24-hour care every day of the year to children and young people with the most serious disabilities, including acute epilepsy, severe autism spectrum disorder and other associated neurological disorders and difficulties. On its 60-acre site is a farm on which the young people can work, recently supported by a large private donation. There are drama courses, business administration, ICT, media studies and many other classes suitable for these youngsters who gain hugely from being in a structured and caring environment.

The National Association of Independent Schools & Non-maintained Special Schools, to which I pay tribute, has some 220 schools in its membership and has produced a number of very valuable research reports. Its October 2011 study, using what was admittedly a small sample of seven schools, revealed that, for day and part-time boarding, delivery costs were between £7,000 and £17,000 lower annually per pupil than for the equivalent provision in local authority-maintained schools. As I said, this was a small study, and we need better comparative data, but at least it tends to suggest that the taxpayer gets good value for money from the independent special sector.

The extraordinary advances in medicine of the last decades mean that many more children with the most serious multiple disabilities now not only survive birth but can find much contentment in their lives with the proper attention, therapies, medication, supervision and, hugely importantly, appropriate education. The independent sector has risen magnificently to this challenge and is clearly the most valuable adjunct to local authority provision.

7 pm

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Lord, Lord Lexden, for tabling this debate and for giving us a chance to reflect on what is happening in the independent education sector and to scrutinise the latest journey that it is embarking upon.

I start with an acknowledgement: the sector has done very well for the parents that pay its sometimes eye-watering fees. Their children are twice as likely to attend a Russell Group university compared to their peers from the state sector and they are five times as likely to attend Oxford or Cambridge, with only one in 100 pupils from the state sector winning a place there.

[BARONESS JONES OF WHITCHURCH]

The Sutton Trust has identified five elite schools and colleges which have as many Oxbridge entrants as nearly 2,000 state schools and colleges. The advantages do not stop there. Pupils go from that advantage to make up 71% of senior judges, 53% of senior diplomats, 45% of public body chairs, 43% of newspaper columnists, 33% of MPs and, of course, as the noble Lord, Lord Storey, drew to our attention, 50% of your Lordships' House.

What does that really tell us and where does it get us? At one level, it reaffirms that our education system is still entrenched along old class division lines and that state school children have to struggle that much harder to succeed against the odds, but I am sorry to say that I think that when the noble Lord opened the debate, he was asking the wrong question. It is not a question of how we can add to the variety or diversity of a sector that is by its very nature selective and elite.

7.02 pm

Sitting suspended for a Division in the House.

7.14 pm

Baroness Jones of Whitchurch: Just to recap, the point I was making was that we are debating the wrong question. The challenge is not really about how we can add to the variety or diversity of the independent sector but much more about how we can give every child in this country a first-class education and an equal chance of succeeding in the very fast-changing global market. Noble Lords do not need me to tell them that the world is changing. If we have any chance of remaining a player in it, we must make sure that all our children are equipped with the skills, knowledge and character to compete successfully.

Our view is that we will lose out if we allow the top jobs to be the preserve of young people from a very small pool. The unskilled, low-ambition jobs of the past simply will not be there for those who are excluded. So whether it is a high-quality vocational offering or a comparable academic grounding, it has to be available to all young people regardless of the type of school they attend. This has to be the way of the future and it is a challenge across the entire educational landscape, including the private sector.

What does the independent sector have to do to play a part in addressing this challenge? One answer is that it should develop deep and measurable partnerships with state schools and share its resources and skills so that the benefits can be shared; for example, independent schools' teaching expertise can be utilised to help disadvantaged state school children into the top-class universities, or by running joint extracurricular programmes with equal access, opening up their sports and arts facilities to joint activities with local schools, and running summer schools and mentoring programmes, thus giving access to their employer networks for careers advice and work experience. They also provide care and innovation in the special school sectors, as

described so eloquently by the noble Lord, Lord Lingfield. I fully acknowledge that that is a role which independent schools play.

All this could be encapsulated in a new schools partnership standard as proposed by our party against which the independent schools will be measured. To give an added incentive, we would amend the Local Government Act 1988 so that private schools' business rate relief would become conditional on passing the new standard. Those independent schools that are already involved in these activities have nothing to fear from these changes, while those that have not kept up with the times will find it difficult to justify why they continue to be subsidised by the taxpayer to the tune of some £700 million over the course of a Parliament.

The statistics appear to show that only 3% of independent schools sponsor an academy, only 5% loan teaching staff to state schools, and one-third allow state school pupils to attend lessons on their premises, but I agree with the noble Lord, Lord Lexden, that more transparent and robust independent verification of what is going on in this sector would help us all. However, on this basis it appears that they have a long way to go before they will be able to persuade us that they are involved across the board in true partnerships with the state sector. While I welcome the noble Lord's commitment to diversity, I would suggest that we need to be much more open about what they are able to offer. If there are to be meaningful partnerships in the future, they need to be based on the recognition of the much bigger challenge of providing a world-class education for every child, which is ultimately in all our interests. On this basis, I am sure that the Minister will agree with much of what I have said, and I look forward to hearing her response.

7.18 pm

Baroness Williams of Trafford (Con): My Lords, I join others in thanking my noble friend Lord Lexden for calling this debate on a very important subject, and other noble Lords for their wide-ranging contributions. I know that my noble friend is a bit disappointed that my noble friend Lord Nash is not here, but I hope that he will be satisfied with my response. I stand here feeling slightly humble because I know that he has a wealth of experience and knowledge of the independent schools sector. As the president of the Independent Schools Association and of the Council for Independent Education, he is already familiar with the proud tradition of the independent sector and the benefits it can bring to thousands of our children, as well as to the communities in which they are situated. I look forward to Parliament hosting his event next week to celebrate the successes of pupils from the smaller independent schools.

I know that this is a topic which is dear to my noble friend's heart. The diversity of the independent education sector is part of its strength and remains an important part of our educational landscape—as it has been for hundreds of years. The choice the sector brings to parents and children to meet their specific needs and aspirations has to be welcomed. I agree entirely with my noble friend that independent schools make a positive contribution to the life of this country and

that we should be proud of the world-class education which many of them provide. My noble friend Lord Black also made the very good point that independent schools today look nothing like the stereotype we have of them now and have had in the past.

The number of independent schools in England remains at around 2,400. There is a turnover of about 100 each year. Schools range vastly in size, ethos and provision. The sector includes day schools, boarding schools and special schools for children with special educational needs, which the noble Lord, Lord Lingfield, mentioned. It includes schools with a specific religious ethos, and minority faiths are very well catered for, as my noble friend Lord Black, I think, pointed out. Some of these schools are very small and draw on a local community for their pupils and for their support. Minority ethnic communities are also well represented. Some schools are very well endowed financially, while others seem to get by on a shoestring.

We are also aware that the independent sector is a force for social change. Indeed, most independent schools place great value on community service. I declare an interest as I speak about Manchester Grammar School because my son attended it. It has a very high academic achievement and many of the pupils go on to attend Russell Group universities, yet the school still ensures that pupils are involved in the community that it serves—inner-city Manchester—which includes some of the poorest communities in the country. The activities include paired reading in the local primary school, teaching English as an additional language, recycling schemes, charitable donations, gardening, and work with special schools, which my son got involved with. That all contributes to the sort of inclusive society which we want to see.

MGS also has a huge bursary fund—I think it is around £10 million; I will be corrected if that is wrong but it is certainly substantial—making it very socially diverse and, indeed, ethnically diverse. I think almost 60% of its pupils are from ethnic backgrounds. It has always seemed to me the very epitome of an incredibly cohesive school community. Of course, most schools offer bursaries and more than a fifth of pupils get help with their fees. So in addition to the scholarships available to children with exceptional talents—for example, in music or the arts—many more children benefit from the academic rigour of independent schools because of the financial help they receive.

I will now turn to some of the specific points that noble Lords made. My noble friend Lord Hodgson talked about a facilities arms race that might lead to higher fees. That might be true but surely it has to be a matter for the schools themselves. Of course, if the facilities are better, they might be justified in charging a higher premium but that is for them to make a decision on. My noble friend Lord Storey talked about the 7% of pupils who go to private schools ending up as the high achievers of our society. I think that goes to the heart of this debate. The noble Baroness, Lady Jones, mentioned the very point that my noble friend Lord Hodgson touched upon—that you cannot strengthen the weak by weakening the strong. It is about bringing up the attainment of our state schools as well as promoting what our private schools offer.

The approach of this Government to reforming the schools system—to give schools greater freedoms around teaching, teacher training and how they are run—has been noticeable over the period of this Government. My noble friend Lord Storey talked about Liverpool College, which used to be a private school and is now an incredibly successful academy. I can point to an example in Manchester: William Hulme's Grammar School used to be a private school. Since it has become a state school, you could argue that it is a more successful school and it is certainly attracting more pupils.

There have been a lot of contributions about the partnerships with the state sector. The Government are very supportive of these partnerships, as the Secretary of State and my noble friend Lord Nash have made clear. At the recent ISSP seminar they were told in no uncertain terms that, for partnerships to be successful, they should be developed through building relationships of trust and integrity and not be imposed from the centre. However, ISSPs can make a difference. We have recently provided funding for 18 new primary-level partnerships. We have made available a modest amount of funding—less than £200,000—to assist primary schools around the country to improve subject teaching at primary and prep school level, with specific emphasis on subjects such as maths, science and modern foreign languages. There is good evidence that they are making a difference. I will give just one or two examples, because I am aware that time is pressing on.

The King's College School in Wimbledon works in partnership with 27 state schools. To give a small taste of what this involves, pupils from King's are given the opportunity to teach lessons such as Latin, music and sport at local primary, secondary and special schools. Sometimes they act as classroom assistants, but in some cases they actually lead the class, of course under the supervision of the King's staff. The impact on results has been remarkable, with the average number of pupils achieving five A* to C grades at GCSE going up from 49% to just under 67% over a five-year period.

My noble friend Lord Lingfield talked specifically about independent special schools and we recognise how very valuable these are. They often provide specialist care for children with profound needs and include 170 such schools which are dual-registered as children's homes. Through Section 41 we will be able to approve a number of schools to receive a funding arrangement, as for special academies.

The noble Baroness, Lady Jones, talked about the dominance of the independent sector. I reiterate that this is about bringing standards in state schools up and not bringing standards in the private sector down. It is not a good situation when there is such a disparity of achievement between the public and independent sectors, and the Government are putting their money where their mouth is over funding for educational improvements. We have provided significant additional funding through the pupil premium—almost £1.9 billion in 2013-14, which will increase to £2.5 billion in 2014-15.

[BARONESS WILLIAMS OF TRAFFORD]

In conclusion, we want all pupils, regardless of the type of school they attend or their background, to achieve the highest quality, world-class education, of which this country is rightly proud. Through our education reforms—more academies and free schools and greater accountability—we are transforming the state system to ensure that every pupil has the opportunity

to fulfil his or her potential. A final point: we do not have any plans to withdraw charitable status from private schools. I think we have made great inroads in the partnerships between the private and state sectors. I thank all noble Lords for the part they have played in this debate.

Committee adjourned at 7.29 pm.

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